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[Report No. 109-]

To regulate the unauthorized installation of computer software, to require clear disclosure to computer users of certain computer software features that may pose a threat to user privacy, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 20, 2005

Mr. BURNS (for himself, Mr. WYDEN, Mrs. BOXER, and Mr. NELSON of Florida) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

JANUARY —, 2006

Reported by Mr. STEVENS, with an amendment in the nature of a substitute

[Strike all after the enacting clause and insert the part printed in italic]

A BILL

To regulate the unauthorized installation of computer software, to require clear disclosure to computer users of certain computer software features that may pose a threat to user privacy, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Software Principles Yielding Better Levels of Consumer
4 Knowledge Act” or the “SPY BLOCK Act”.

5 (b) **TABLE OF CONTENTS.**—The table of contents for
6 this Act is as follows:

Sec. 1. Short title.

Sec. 2. Prohibited practices related to software installation in general.

Sec. 3. Installing surreptitious information collection features on a user’s com-
puter.

Sec. 4. Adware that conceals its operation.

Sec. 5. Other practices that thwart user control of computer.

Sec. 6. Limitations on liability.

Sec. 7. FTC rulemaking authority.

Sec. 8. Administration and enforcement.

Sec. 9. Actions by States.

Sec. 10. Effect on other laws.

Sec. 11. Liability protections for anti-spyware software or services.

Sec. 12. Penalties for certain unauthorized activities relating to computers.

Sec. 13. Definitions.

Sec. 14. Effective date.

7 **SEC. 2. PROHIBITED PRACTICES RELATED TO SOFTWARE**
8 **INSTALLATION IN GENERAL.**

9 (a) **SURREPTITIOUS INSTALLATION.**—

10 (1) **IN GENERAL.**—It is unlawful for a person
11 who is not an authorized user of a protected com-
12 puter to cause the installation of software on the
13 computer in a manner that—

14 (A) conceals from the user of the computer
15 the fact that the software is being installed; or

16 (B) prevents the user of the computer
17 from having an opportunity to knowingly grant
18 or withhold consent to the installation.

1 (2) ~~EXCEPTION.~~—This subsection does not
2 apply to—

3 ~~(A)~~ the installation of software that falls
4 within the scope of a previous grant of author-
5 ization by an authorized user;

6 ~~(B)~~ the installation of an upgrade to a
7 software program that has already been in-
8 stalled on the computer with the authorization
9 of an authorized user;

10 ~~(C)~~ the installation of software before the
11 first retail sale and delivery of the computer; or

12 ~~(D)~~ the installation of software that ceases
13 to operate when the user of the computer exits
14 the software or service through which the user
15 accesses the Internet, if the software so in-
16 stalled does not begin to operate again when
17 the user accesses the Internet via that computer
18 in the future.

19 ~~(b) MISLEADING INDUCEMENTS TO INSTALL.~~—It is
20 unlawful for a person who is not an authorized user of
21 a protected computer to induce an authorized user of the
22 computer to consent to the installation of software on the
23 computer by means of a materially false or misleading rep-
24 resentation concerning—

1 (1) the identity of an operator of an Internet
2 website or online service at which the software is
3 made available for download from the Internet;

4 (2) the identity of the author, publisher, or au-
5 thORIZED distributor of the software;

6 (3) the nature or function of the software; or

7 (4) the consequences of not installing the soft-
8 ware.

9 (c) PREVENTING REASONABLE EFFORTS TO
10 UNINSTALL.—

11 (1) IN GENERAL.—It is unlawful for a person
12 who is not an authorized user of a protected com-
13 puter to cause the installation of software on the
14 computer if the software cannot subsequently be
15 uninstalled or disabled by an authorized user
16 through a program removal function that is usual
17 and customary with the user's operating system; or
18 otherwise as clearly and conspicuously disclosed to
19 the user.

20 (2) LIMITATIONS.—

21 (A) AUTHORITY TO UNINSTALL.—Software
22 that enables an authorized user of a computer,
23 such as a parent, employer, or system adminis-
24 trator, to choose to prevent another user of the
25 same computer from uninstalling or disabling

1 the software shall not be considered to prevent
2 reasonable efforts to uninstall or disable the
3 software within the meaning of this subsection
4 if at least 1 authorized user retains the ability
5 to uninstall or disable the software.

6 (B) CONSTRUCTION.—This subsection
7 shall not be construed to require individual fea-
8 tures or functions of a software program, up-
9 grades to a previously installed software pro-
10 gram, or software programs that were installed
11 on a bundled basis with other software or with
12 hardware to be capable of being uninstalled or
13 disabled separately from such software or hard-
14 ware.

15 **SEC. 3. INSTALLING SURREPTITIOUS INFORMATION COL-**
16 **LECTION FEATURES ON A USER'S COMPUTER.**

17 (a) IN GENERAL.—It is unlawful for a person who
18 is not an authorized user of a protected computer to—

19 (1) cause the installation on that computer of
20 software that includes a surreptitious information
21 collection feature; or

22 (2) use software installed in violation of para-
23 graph (1) to collect information about a user of the
24 computer or the use of a protected computer by that
25 user.

1 (b) ~~AUTHORIZATION STATUS.~~—This section shall not
2 be interpreted to prohibit a person from causing the instal-
3 lation of software that collects and transmits only infor-
4 mation that is reasonably needed to determine whether or
5 not the user of a protected computer is licensed or author-
6 ized to use the software.

7 (c) ~~SURREPTITIOUS INFORMATION COLLECTION~~
8 ~~FEATURE DEFINED.~~—For purposes of this section, the
9 term “surreptitious information collection feature” means
10 a feature of software that—

11 (1) collects information about a user of a pro-
12 tected computer or the use of a protected computer
13 by that user, and transmits such information to any
14 other person or computer—

15 (A) on an automatic basis or at the direc-
16 tion of person other than an authorized user of
17 the computer, such that no authorized user
18 knowingly triggers or controls the collection and
19 transmission;

20 (B) in a manner that is not transparent to
21 an authorized user at or near the time of the
22 collection and transmission, such that no au-
23 thorized user is likely to be aware of it when in-
24 formation collection and transmission are occur-
25 ring; and

1 (C) for purposes other than—

2 (i) facilitating the proper technical
3 functioning of a capability, function, or
4 service that an authorized user of the com-
5 puter has knowingly used, executed, or en-
6 abled; or

7 (ii) enabling the provider of an online
8 service knowingly used or subscribed to by
9 an authorized user of the computer to
10 monitor or record the user's usage of the
11 service; or to customize or otherwise affect
12 the provision of the service to the user
13 based on such usage; and

14 (2) begins to collect and transmit such informa-
15 tion without prior notification that—

16 (A) clearly and conspicuously discloses to
17 an authorized user of the computer the type of
18 information the software will collect and the
19 types of ways the information may be used and
20 distributed; and

21 (B) is provided at a time and in a manner
22 such that an authorized user of the computer
23 has an opportunity, after reviewing the infor-
24 mation contained in the notice, to prevent ei-
25 ther—

- 1 (i) the installation of the software; or
- 2 (ii) the beginning of the operation of
- 3 the information collection and transmission
- 4 capability described in paragraph (1).

5 **SEC. 4. ADWARE THAT CONCEALS ITS OPERATION.**

6 (a) **IN GENERAL.**—It is unlawful for a person who
7 is not an authorized user of a protected computer to cause
8 the installation on that computer of software that causes
9 advertisements to be displayed to the user without a label
10 or other reasonable means of identifying to the user of
11 the computer, each time such an advertisement is dis-
12 played, which software caused the advertisement's deliv-
13 ery.

14 (b) **EXCEPTION.**—Software that causes advertise-
15 ments to be displayed without a label or other reasonable
16 means of identification shall not give rise to liability under
17 subsection (a) if those advertisements are displayed to a
18 user of the computer—

19 (1) only when a user is accessing an Internet
20 website or online service—

21 (A) operated by the publisher of the soft-
22 ware; or

23 (B) the operator of which has provided ex-
24 press consent to the display of such advertise-
25 ments to users of the website or service; or

1 ~~(2)~~ only in a manner or at a time such that a
2 reasonable user would understand which software
3 caused the delivery of the advertisements.

4 **SEC. 5. OTHER PRACTICES THAT THWART USER CONTROL**
5 **OF COMPUTER.**

6 It is unlawful for a person who is not an authorized
7 user of a protected computer to engage in an unfair or
8 deceptive act or practice that involves—

9 ~~(1)~~ utilizing the computer to send unsolicited
10 information or material from the user's computer to
11 other computers;

12 ~~(2)~~ diverting an authorized user's Internet
13 browser away from the Internet website the user in-
14 tended to view to ~~1~~ or more other websites, unless
15 such diversion has been authorized by the website
16 the user intended to view;

17 ~~(3)~~ displaying an advertisement, series of adver-
18 tisements, or other content on the computer through
19 windows in an Internet browser, in such a manner
20 that the user of the computer cannot end the display
21 of such advertisements or content without turning
22 off the computer or terminating all sessions of the
23 Internet browser (except that this paragraph shall
24 not apply to the display of content related to the
25 functionality or identity of the Internet browser);

1 (4) modifying settings relating to the use of the
2 computer or to the computer's access to or use of
3 the Internet, including—

4 (A) altering the default Web page that ini-
5 tially appears when a user of the computer
6 launches an Internet browser;

7 (B) altering the default provider or Web
8 proxy used to access or search the Internet;

9 (C) altering bookmarks used to store fa-
10 vorite Internet website addresses; or

11 (D) altering settings relating to security
12 measures that protect the computer and the in-
13 formation stored on the computer against unau-
14 thorized access or use; or

15 (5) removing, disabling, or rendering inoper-
16 ative a security or privacy protection technology in-
17 stalled on the computer.

18 **SEC. 6. LIMITATIONS ON LIABILITY.**

19 (a) **PASSIVE TRANSMISSION, HOSTING, OR LINK-**
20 **ING.**—A person shall not be deemed to have violated any
21 provision of this Act solely because the person provided—

22 (1) the Internet connection, telephone connec-
23 tion, or other transmission or routing function
24 through which software was delivered to a protected
25 computer for installation;

1 (2) the storage or hosting of software or of an
2 Internet website through which software was made
3 available for installation to a protected computer; or

4 (3) an information location tool, such as a di-
5 rectory, index, reference, pointer, or hypertext link,
6 through which a user of a protected computer lo-
7 cated software available for installation.

8 (b) NETWORK SECURITY.—It is not a violation of
9 section 2, 3, or 5 for a provider of a network or online
10 service used by an authorized user of a protected com-
11 puter, or to which any authorized user of a protected com-
12 puter subscribes, to monitor, interact with, or install soft-
13 ware for the purpose of—

14 (1) protecting the security of the network, serv-
15 ice, or computer;

16 (2) facilitating diagnostics, technical support,
17 maintenance, network management, or repair; or

18 (3) preventing or detecting unauthorized, fraud-
19 ulent, or otherwise unlawful uses of the network or
20 service.

21 (c) MANUFACTURER'S LIABILITY FOR THIRD-PARTY
22 SOFTWARE.—A manufacturer or retailer of a protected
23 computer shall not be liable under any provision of this
24 Act for causing the installation on the computer, prior to
25 the first retail sale and delivery of the computer, of third-

1 party branded software, unless the manufacturer or re-
2 tailer—

3 (1) uses a surreptitious information collection
4 feature included in the software to collect informa-
5 tion about a user of the computer or the use of a
6 protected computer by that user; or

7 (2) knows that the software will cause adver-
8 tisements for the manufacturer or retailer to be dis-
9 played to a user of the computer.

10 (d) INVESTIGATIONAL EXCEPTION.—Nothing in this
11 Act prohibits any lawfully authorized investigative, protec-
12 tive, or intelligence activity of a law enforcement agency
13 of the United States, a State, or a political subdivision
14 of a State, or of an intelligence agency of the United
15 States.

16 (e) SERVICES PROVIDED OVER MVPD SYSTEMS.—
17 It is not a violation of this Act for a multichannel video
18 programming distributor (as defined in section 602(13) of
19 the Communications Act of 1934 (47 U.S.C. 522(13)) to
20 utilize a navigation device, or interact with such a device,
21 or to install or use software on such a device, in connection
22 with the provision of multichannel video programming or
23 other services offered over a multichannel video program-
24 ming system or the collection or disclosure of subscriber
25 information, if the provision of such service or the collec-

1 tion or disclosure of such information is subject to section
2 338(i) or section 631 of the Communications Act of 1934
3 (47 U.S.C. 338(i) or 551).

4 **SEC. 7. FTC RULEMAKING AUTHORITY.**

5 (a) IN GENERAL.—Subject to the limitations of sub-
6 section (b), the Commission may issue such rules in ac-
7 cordance with section 553 of title 5, United States Code,
8 as may be necessary to implement or clarify the provisions
9 of this Act.

10 (b) SAFE HARBORS.—

11 (1) IN GENERAL.—The Commission may issue
12 regulations establishing specific wordings or formats
13 for—

14 (A) notification that is sufficient under
15 section 3(e)(2) to prevent a software feature
16 from being a surreptitious information collec-
17 tion feature (as defined in section 3(e)); or

18 (B) labels or other means of identification
19 that are sufficient to avoid violation of section
20 4(a).

21 (2) FUNCTION OF COMMISSION'S SUGGESTED
22 WORDINGS OR FORMATS.—

23 (A) USAGE IS VOLUNTARY.—The Commis-
24 sion may not require the use of any specific

1 wording or format prescribed under paragraph
2 (1) to meet the requirements of section 3 or 4.

3 (B) OTHER MEANS OF COMPLIANCE.—The
4 use of a specific wording or format prescribed
5 under paragraph (1) shall not be the exclusive
6 means of providing notification, labels, or other
7 identification that meet the requirements of sec-
8 tions 3 and 4.

9 (c) LIMITATIONS ON LIABILITY.—In addition to the
10 limitations on liability specified in section 6, the Commis-
11 sion may by regulation establish additional limitations or
12 exceptions upon a finding that such limitations or excep-
13 tions are reasonably necessary to promote the public inter-
14 est and are consistent with the purposes of this Act. No
15 such additional limitation of liability may be made contin-
16 gent upon the adoption of any specific wording or format
17 specified in regulations under subsection (b)(1).

18 **SEC. 8. ADMINISTRATION AND ENFORCEMENT.**

19 (a) IN GENERAL.—Except as provided in subsection
20 (b), this Act shall be enforced by the Commission as if
21 a violation of this Act or of any regulation promulgated
22 by the Commission under this Act were an unfair or de-
23 ceptive act or practice proscribed under section
24 18(a)(1)(B) of the Federal Trade Commission Act (15
25 U.S.C. 57a(a)(1)(B)).

1 (b) ENFORCEMENT BY CERTAIN OTHER AGEN-
2 CIES.—Compliance with this Act shall be enforced
3 under—

4 (1) section 8 of the Federal Deposit Insurance
5 Act (12 U.S.C. 1818), in the case of—

6 (A) national banks, and Federal branches
7 and Federal agencies of foreign banks, by the
8 Office of the Comptroller of the Currency;

9 (B) member banks of the Federal Reserve
10 System (other than national banks), branches
11 and agencies of foreign banks (other than Fed-
12 eral branches, Federal agencies, and insured
13 State branches of foreign banks); commercial
14 lending companies owned or controlled by for-
15 eign banks, and organizations operating under
16 section 25 or 25A of the Federal Reserve Act
17 (12 U.S.C. 601 and 611), by the Board; and

18 (C) banks insured by the Federal Deposit
19 Insurance Corporation (other than members of
20 the Federal Reserve System) and insured State
21 branches of foreign banks, by the Board of Di-
22 rectors of the Federal Deposit Insurance Cor-
23 poration;

24 (2) section 8 of the Federal Deposit Insurance
25 Act (12 U.S.C. 1818), by the Director of the Office

1 of Thrift Supervision, in the case of a savings asso-
2 ciation the deposits of which are insured by the Fed-
3 eral Deposit Insurance Corporation;

4 (3) the Federal Credit Union Act (12 U.S.C.
5 1751 et seq.) by the National Credit Union Adminis-
6 tration Board with respect to any Federal credit
7 union;

8 (4) part A of subtitle VII of title 49, United
9 States Code, by the Secretary of Transportation
10 with respect to any air carrier or foreign air carrier
11 subject to that part;

12 (5) the Packers and Stockyards Act, 1921 (7
13 U.S.C. 181 et seq.) (except as provided in section
14 406 of that Act (7 U.S.C. 226, 227)), by the Sec-
15 retary of Agriculture with respect to any activities
16 subject to that Act; and

17 (6) the Farm Credit Act of 1971 (12 U.S.C.
18 2001 et seq.) by the Farm Credit Administration
19 with respect to any Federal land bank, Federal land
20 bank association, Federal intermediate credit bank,
21 or production credit association.

22 (c) EXERCISE OF CERTAIN POWERS.—For the pur-
23 pose of the exercise by any agency referred to in sub-
24 section (b) of its powers under any Act referred to in that
25 subsection, a violation of this Act is deemed to be a viola-

1 tion of a requirement imposed under that Act. In addition
2 to its powers under any provision of law specifically re-
3 ferred to in subsection (b), each of the agencies referred
4 to in that subsection may exercise, for the purpose of en-
5 forcing compliance with any requirement imposed under
6 this Act, any other authority conferred on it by law.

7 (d) ACTIONS BY THE COMMISSION.—The Commis-
8 sion shall prevent any person from violating this Act in
9 the same manner, by the same means, and with the same
10 jurisdiction, powers, and duties as though all applicable
11 terms and provisions of the Federal Trade Commission
12 Act (15 U.S.C. 41 et seq.) were incorporated into and
13 made a part of this Act. Any entity that violates any provi-
14 sion of that section is subject to the penalties and entitled
15 to the privileges and immunities provided in the Federal
16 Trade Commission Act in the same manner, by the same
17 means, and with the same jurisdiction, power, and duties
18 as though all applicable terms and provisions of the Fed-
19 eral Trade Commission Act were incorporated into and
20 made a part of that section.

21 **SEC. 9. ACTIONS BY STATES.**

22 (a) IN GENERAL.—

23 (1) CIVIL ACTIONS.—In any case in which the
24 attorney general of a State has reason to believe
25 that an interest of the residents of that State has

1 been or is threatened or adversely affected by the
2 engagement of any person in a practice that this Act
3 prohibits, the State, as *parens patriae*, may bring a
4 civil action on behalf of the residents of the State in
5 a district court of the United States of appropriate
6 jurisdiction—

7 (A) to enjoin that practice;

8 (B) to enforce compliance with the rule;

9 (C) to obtain damage, restitution, or other
10 compensation on behalf of residents of the
11 State; or

12 (D) to obtain such other relief as the court
13 may consider to be appropriate.

14 (2) NOTICE.—

15 (A) IN GENERAL.—Before filing an action
16 under paragraph (1), the attorney general of
17 the State involved shall provide to the Commis-
18 sion—

19 (i) written notice of that action; and

20 (ii) a copy of the complaint for that
21 action.

22 (B) EXEMPTION.—

23 (i) IN GENERAL.—Subparagraph (A)
24 shall not apply with respect to the filing of
25 an action by an attorney general of a State

1 under this subsection, if the attorney gen-
2 eral determines that it is not feasible to
3 provide the notice described in that sub-
4 paragraph before the filing of the action.

5 (ii) NOTIFICATION.—In an action de-
6 scribed in clause (i), the attorney general
7 of a State shall provide notice and a copy
8 of the complaint to the Commission at the
9 same time as the attorney general files the
10 action.

11 (b) INTERVENTION.—

12 (1) IN GENERAL.—On receiving notice under
13 subsection (a)(2), the Commission shall have the
14 right to intervene in the action that is the subject
15 of the notice.

16 (2) EFFECT OF INTERVENTION.—If the Com-
17 mission intervenes in an action under subsection (a),
18 it shall have the right—

19 (A) to be heard with respect to any matter
20 that arises in that action; and

21 (B) to file a petition for appeal.

22 (c) CONSTRUCTION.—For purposes of bringing any
23 civil action under subsection (a), nothing in this subtitle
24 shall be construed to prevent an attorney general of a

1 State from exercising the powers conferred on the attorney
2 general by the laws of that State to—

3 (1) conduct investigations;

4 (2) administer oaths or affirmations; or

5 (3) compel the attendance of witnesses or the
6 production of documentary and other evidence.

7 (d) ACTIONS BY THE COMMISSION.—In any case in
8 which an action is instituted by or on behalf of the Com-
9 mission for violation of this Act, no State may, during the
10 pendency of that action, institute an action under sub-
11 section (a) against any defendant named in the complaint
12 in that action for violation of that section.

13 (e) VENUE; SERVICE OF PROCESS.—

14 (1) VENUE.—Any action brought under sub-
15 section (a) may be brought in the district court of
16 the United States that meets applicable require-
17 ments relating to venue under section 1391 of title
18 28, United States Code.

19 (2) SERVICE OF PROCESS.—In an action
20 brought under subsection (a), process may be served
21 in any district in which the defendant—

22 (A) is an inhabitant; or

23 (B) may be found.

1 **SEC. 10. EFFECT ON OTHER LAWS.**

2 (a) ~~FEDERAL LAW.~~—Nothing in this Act shall be
3 construed to limit or affect in any way the Commission’s
4 authority to bring enforcement actions or take any other
5 measures under the Federal Trade Commission Act or any
6 other provision of law.

7 (b) ~~STATE LAW.~~—

8 (1) ~~STATE LAW CONCERNING INFORMATION~~
9 ~~COLLECTION SOFTWARE OR ADWARE.~~—This Act su-
10 persedes any statute, regulation, or rule of a State
11 or political subdivision of a State that expressly lim-
12 its or restricts the installation or use of software on
13 a protected computer to—

14 (A) collect information about the user of
15 the computer or the user’s Internet browsing
16 behavior or other use of the computer; or

17 (B) cause advertisements to be delivered to
18 the user of the computer,

19 except to the extent that any such statute, regula-
20 tion, or rule prohibits deception in connection with
21 the installation or use of such software.

22 (2) ~~STATE LAW CONCERNING NOTICE OF SOFT-~~
23 ~~WARE INSTALLATION.~~—This Act supersedes any
24 statute, regulation, or rule of a State or political
25 subdivision of a State that prescribes specific meth-

1 ods for providing notification before the installation
2 of software on a computer.

3 ~~(3) STATE LAW NOT SPECIFIC TO SOFTWARE.—~~

4 This Act shall not be construed to preempt the ap-
5 plicability of State criminal, trespass, contract, tort,
6 or anti-fraud law.

7 **SEC. 11. LIABILITY PROTECTIONS FOR ANTI-SPYWARE**
8 **SOFTWARE OR SERVICES.**

9 No provider of computer software or of an interactive
10 computer service may be held liable under this Act or any
11 other provision of law for identifying, naming, removing,
12 disabling, or otherwise affecting the operation or potential
13 operation on a computer of computer software published
14 by a third party, if—

15 (1) the provider's software or interactive com-
16 puter service is intended to identify, prevent the in-
17 stallation or execution of, remove, or disable com-
18 puter software that is or was installed in violation of
19 section 2, 3, or 4 of this Act or used to violate sec-
20 tion 5 of this Act;

21 (2) an authorized user of the computer has con-
22 sented to the use of the provider's computer soft-
23 ware or interactive computer service on the com-
24 puter;

1 (3) the provider believes in good faith that the
2 installation or operation of the third-party computer
3 software involved or involves a violation of section 2,
4 3, 4, or 5 of this Act; and

5 (4) the provider either notifies and obtains the
6 consent of an authorized user of the computer before
7 taking any action to remove, disable, or otherwise
8 affect the operation or potential operation of the
9 third-party software on the computer, or has ob-
10 tained prior authorization from an authorized user
11 to take such action without providing such notice
12 and consent.

13 **SEC. 12. PENALTIES FOR CERTAIN UNAUTHORIZED ACTIVI-**
14 **TIES RELATING TO COMPUTERS.**

15 (a) **IN GENERAL.**—Chapter 47 of title 18, United
16 States Code, is amended by inserting after section 1030
17 the following:

18 **“§ 1030A. Illicit indirect use of protected computers**

19 “(a) Whoever intentionally accesses a protected com-
20 puter without authorization, or exceeds authorized access
21 to a protected computer, by causing a computer program
22 or code to be copied onto the protected computer, and in-
23 tentiously uses that program or code in furtherance of
24 another Federal criminal offense shall be fined under this
25 title or imprisoned 5 years, or both.

1 “(b) Whoever intentionally accesses a protected com-
2 puter without authorization, or exceeds authorized access
3 to a protected computer, by causing a computer program
4 or code to be copied onto the protected computer, and by
5 means of that program or code intentionally impairs the
6 security protection of the protected computer shall be
7 fined under this title or imprisoned not more than 2 years,
8 or both.

9 “(c) A person shall not violate this section who solely
10 provides—

11 “(1) an Internet connection, telephone connec-
12 tion, or other transmission or routing function
13 through which software is delivered to a protected
14 computer for installation;

15 “(2) the storage or hosting of software, or of an
16 Internet website, through which software is made
17 available for installation to a protected computer; or

18 “(3) an information location tool, such as a di-
19 rectory, index, reference, pointer, or hypertext link,
20 through which a user of a protected computer lo-
21 cates software available for installation.

22 “(d) A provider of a network or online service that
23 an authorized user of a protected computer uses or sub-
24 scribes to shall not violate this section by any monitoring

1 of, interaction with, or installation of software for the pur-
2 pose of—

3 “(1) protecting the security of the network,
4 service, or computer;

5 “(2) facilitating diagnostics, technical support,
6 maintenance, network management, or repair; or

7 “(3) preventing or detecting unauthorized,
8 fraudulent, or otherwise unlawful uses of the net-
9 work or service.

10 “(e) No person may bring a civil action under the
11 law of any State if such action is premised in whole or
12 in part upon the defendant’s violating this section. For
13 the purposes of this subsection, the term ‘State’ includes
14 the District of Columbia, Puerto Rico, and any other terri-
15 tory or possession of the United States.”.

16 (b) CONFORMING AMENDMENT.—The table of sec-
17 tions at the beginning of chapter 47 of title 18, United
18 States Code, is amended by inserting after the item relat-
19 ing to section 1030 the following new item:

 “1030A. Illicit indirect use of protected computers.”.

20 **SEC. 13. DEFINITIONS.**

21 In this Act:

22 (1) AUTHORIZED USER.—The term “authorized
23 user”, when used with respect to a computer, means
24 the owner or lessee of a computer, or someone using

1 or accessing a computer with the actual or apparent
2 authorization of the owner or lessee.

3 ~~(2) CAUSE THE INSTALLATION.~~—The term
4 “cause the installation” when used with respect to
5 particular software, means to knowingly provide the
6 technical means by which the software is installed,
7 or to knowingly pay or provide other consideration
8 to, or to knowingly induce or authorize, another per-
9 son to do so.

10 ~~(3) COMMISSION.~~—The term “Commission”
11 means the Federal Trade Commission.

12 ~~(4) COOKIE.~~—The term “cookie” means a text
13 file—

14 ~~(A)~~ that is placed on a computer by, or on
15 behalf of, an Internet service provider, inter-
16 active computer service, or Internet website;
17 and

18 ~~(B)~~ the sole function of which is to record
19 information that can be read or recognized
20 when the user of the computer subsequently ac-
21 cesses particular websites or online locations or
22 services.

23 ~~(5) FIRST RETAIL SALE AND DELIVERY.~~—The
24 term “first retail sale and delivery” means the first
25 sale, for a purpose other than resale, of a protected

1 computer and the delivery of that computer to the
2 purchaser or a recipient designated by the purchaser
3 at the time of such first sale. For purposes of this
4 paragraph, the lease of a computer shall be consid-
5 ered a sale of the computer for a purpose other than
6 resale.

7 (6) INSTALL.—

8 (A) IN GENERAL.—The term “install”
9 means—

10 (i) to write computer software to a
11 computer’s persistent storage medium,
12 such as the computer’s hard disk, in such
13 a way that the computer software is re-
14 tained on the computer after the computer
15 is turned off and subsequently restarted;
16 or

17 (ii) to write computer software to a
18 computer’s temporary memory, such as
19 random access memory, in such a way that
20 the software is retained and continues to
21 operate after the user of the computer
22 turns off or exits the Internet service,
23 interactive computer service, or Internet
24 website from which the computer software
25 was obtained.

1 (B) EXCEPTION FOR TEMPORARY
2 CACHE.—The term “install” does not include
3 the writing of software to an area of the per-
4 sistent storage medium that is expressly re-
5 served for the temporary retention of recently
6 accessed or input data or information if the
7 software retained in that area remains inoper-
8 ative unless a user of the computer chooses to
9 access that temporary retention area.

10 (7) PERSON.—The term “person” has the
11 meaning given that term in section 3(32) of the
12 Communications Act of 1934 (47 U.S.C. 153(32)).

13 (8) PROTECTED COMPUTER.—The term “pro-
14 tected computer” has the meaning given that term
15 in section 1030(e)(2)(B) of title 18, United States
16 Code.

17 (9) SOFTWARE.—The term “software” means
18 any program designed to cause a computer to per-
19 form a desired function or functions. Such term does
20 not include any cookie.

21 (10) UNFAIR OR DECEPTIVE ACT OR PRAC-
22 TICE.—The term “unfair or deceptive act or prac-
23 tice” has the same meaning as when used in section
24 5 of the Federal Trade Commission Act (15 U.S.C.
25 45).

1 (11) UPGRADE.—The term “upgrade”, when
2 used with respect to a previously installed software
3 program, means additional software that is issued
4 by, or with the authorization of, the publisher or any
5 successor to the publisher of the software program
6 to improve, correct, repair, enhance, supplement, or
7 otherwise modify the software program.

8 **SEC. 14. EFFECTIVE DATE.**

9 This Act shall take effect 180 days after the date of
10 enactment of this Act.

11 **SECTION 1. TABLE OF CONTENTS.**

12 *The table of contents for this Act is as follows:*

Sec. 1. Table of contents.

TITLE I—SPYWARE

Sec. 101. Short title.

Sec. 102. Federal Trade Commission authority to combat deceptive acts or practices relating to spyware.

Sec. 103. Prohibited behaviors.

Sec. 104. Installing personal information collection features on a user’s computer.

Sec. 105. Adware that conceals its operation.

Sec. 106. FTC administration and enforcement.

Sec. 107. Additional enforcement.

Sec. 108. State enforcement.

Sec. 109. Effect on other laws.

Sec. 110. Limitations on liability.

Sec. 111. Definitions.

Sec. 112. Criminal penalties for certain unauthorized activities relating to computers.

Sec. 112. Effective date.

TITLE II—SAFE WEB

Sec. 201. Short title; findings; purpose.

Sec. 202. Foreign law enforcement agency defined.

Sec. 203. Availability of remedies.

Sec. 204. Powers of the Commission.

Sec. 205. Representation in foreign litigation.

Sec. 206. Sharing information with foreign law enforcement agencies.

Sec. 207. Confidentiality; delayed notice of process.

Sec. 208. Protection for voluntary provision of information.

Sec. 209. Staff exchanges.

Sec. 210. Information sharing with financial regulators.

Sec. 211. Authority to accept reimbursements, gifts, and voluntary and uncompensated services.

Sec. 212. Preservation of existing authority.

Sec. 213. Report.

TITLE III. INCREASE IN CERTAIN PENALTIES

Sec. 301. Increase in penalties for unfair or deceptive acts or practices exploiting reaction to certain emergencies and major disasters.

1 **TITLE I—SPYWARE**

2 **SEC. 101. SHORT TITLE.**

3 *This title may be cited as the “Software Principles*
4 *Yielding Better Levels of Consumer Knowledge Act” or the*
5 *“SPY BLOCK Act”.*

6 **SEC. 102. FEDERAL TRADE COMMISSION AUTHORITY TO**
7 **COMBAT DECEPTIVE ACTS OR PRACTICES RE-**
8 **LATING TO SPYWARE.**

9 *It is a violation of section 18 of the Federal Trade*
10 *Commission Act (15 U.S.C. 57a) to install through unfair*
11 *or deceptive acts or practices software on protected com-*
12 *puters.*

13 **SEC. 103. INSTALLING PERSONAL INFORMATION COLLEC-**
14 **TION FEATURES ON A USER’S COMPUTER.**

15 *(a) IN GENERAL.—It is unlawful for a person who is*
16 *not an authorized user of a protected computer to cause the*
17 *installation on that computer of software that—*

18 *(1) takes control of the protected computer by—*

19 *(A) ZOMBIES.—Transmitting or relaying*
20 *commercial electronic mail or a computer virus*

1 *from a protected computer if the transmission or*
2 *relaying is initiated by a person other than an*
3 *authorized user and with the authorization of an*
4 *authorized user;*

5 (B) *MODEM HIJACKING.*—*Accessing or*
6 *using the modem or Internet service of an au-*
7 *thorized user of a protected computer for the pur-*
8 *pose of—*

9 (i) *causing damage to the protected*
10 *computer; or*

11 (ii) *causing the authorized user to*
12 *incur financial charges for a service that is*
13 *not authorized by that authorized user;*

14 (C) *SERVICE DENIAL ATTACKS.*—*Using a*
15 *protected computer as part of an activity per-*
16 *formed by a group of computers for the purpose*
17 *of causing damage to another computer, includ-*
18 *ing launching a denial of service attack; or*

19 (D) *ENDLESS LOOP POP-UP ADVERTISE-*
20 *MENTS.*—*Opening multiple, sequential, stand-*
21 *alone advertisements in an authorized user's*
22 *Internet browser on a protected computer with-*
23 *out the authorization of that user and with*
24 *knowledge that a reasonable computer user cannot*

1 *close the advertisements without turning off the*
2 *computer or closing the Internet browser;*

3 *(2) modifies—*

4 *(A) ENABLING IDENTITY THEFT.—An au-*
5 *thorized user's security or other settings related*
6 *to access to, or use of, the Internet on a protected*
7 *computer that protect information about the au-*
8 *thorized user for the purpose of stealing the au-*
9 *thorized user's personal information; or*

10 *(B) DISABLING SECURITY.—The security*
11 *settings of a protected computer for the purpose*
12 *of causing damage to another computer; or*

13 *(3) prevents, without authorization from the au-*
14 *thorized user, that user's reasonable efforts to block the*
15 *installation of, or to disable, software by—*

16 *(A) FORCING DECLINED INSTALLS.—Pre-*
17 *senting the authorized user with an option to de-*
18 *cline installation of software with knowledge*
19 *that, when the option is selected by the author-*
20 *ized user, the installation nevertheless proceeds;*
21 *or*

22 *(B) FALSE UNINSTALLS.—Falsely rep-*
23 *resenting that the software has been disabled.*

24 *(b) EXCEPTION.—Subsection (a) does not apply to any*
25 *monitoring of, or interaction with, a subscriber's Internet*

1 *or other network connection or service, or a protected com-*
2 *puter, by a telecommunications carrier, cable operator,*
3 *computer hardware or software provider, or provider of in-*
4 *formation services or interactive computer service for net-*
5 *work or computer security purposes, diagnostics, technical*
6 *support, repair, authorized updates of software or system*
7 *firmware, authorized remote system management, or detec-*
8 *tion or prevention of the unauthorized use of, or fraudulent*
9 *or other illegal activities in connection with, a network,*
10 *service, or software.*

11 *(c) RULE OF CONSTRUCTION.—This section shall not*
12 *be construed to limit in any way what is an unfair or de-*
13 *ceptive act or practice under the Federal Trade Commission*
14 *Act (15 U.S.C. 41 et seq.).*

15 **SEC. 104. INSTALLING PERSONAL INFORMATION COLLEC-**
16 **TION FEATURES ON A USER'S COMPUTER.**

17 *(a) IN GENERAL.—It is unlawful for a person who is*
18 *not an authorized user of a protected computer to install*
19 *on that computer software that collects personal informa-*
20 *tion unless the authorized user of the computer knows, or*
21 *reasonably should know, that—*

22 *(1) the software is being installed; and*

23 *(2) the software collects personal information.*

1 (b) *EXCEPTIONS.*—*This section shall not be interpreted*
2 *to restrict a person from causing the installation of software*
3 *that collects—*

4 (1) *information relating to the monitoring of, or*
5 *interaction with, a subscriber’s Internet or other net-*
6 *work connection or service, or a protected computer,*
7 *by a telecommunications carrier, cable operator, com-*
8 *puter hardware or software provider, or provider of*
9 *information services or interactive computer service*
10 *for network or computer security purposes,*
11 *diagnostics, technical support, repair, authorized up-*
12 *dates of software or system firmware, authorized re-*
13 *mote system management, or detection or prevention*
14 *of the unauthorized use of, or fraudulent or other ille-*
15 *gal activities in connection with, a network, service,*
16 *or computer software;*

17 (2) *information collected by the provider of an*
18 *online service or website knowingly used or subscribed*
19 *to by an authorized user, as long as the information*
20 *is used only to effect the user’s experience while using*
21 *such online service or website; or*

22 (3) *information collected by software that—*

23 (A) *discloses to the user that the software—*

24 (i) *collects personal information; and*

1 (ii) may be uninstalled by means of an
2 icon, link, or other display provided on the
3 computer screen; and

4 (B) provides a functioning, clear and con-
5 spicuous icon, link, or other display that directs
6 the user to instructions concerning how the user
7 may uninstall the software.

8 **SEC. 105. ADWARE THAT CONCEALS ITS OPERATION.**

9 (a) *In General.*—It is unlawful for a person who is
10 not an authorized user of a protected computer to cause the
11 installation on that computer of software that—

12 (1) does not display to the user, each time the
13 software causes an advertisement to appear, a clear
14 and conspicuous label or other reasonable means of
15 identifying to the user of the computer—

16 (A) the identity or name of the software
17 that caused the advertisement to appear; and

18 (B) a clear and conspicuous hypertext link
19 to instructions concerning how the user may
20 uninstall the software causing the advertisement
21 to appear.

22 (b) *EXCEPTION.*—Software that causes advertisements
23 to be displayed without a clear and conspicuous label or
24 other reasonable means of identification shall not give rise
25 to liability under subsection (a) if those advertisements are

1 *displayed to a user of the computer only when a user is*
2 *accessing or using an Internet website or online service—*

3 *(1) owned or operated by the author or publisher*
4 *of the software; or*

5 *(2) the website or online service has authorized*
6 *the author or publisher of the software to display such*
7 *advertisements to users of that website or service.*

8 **SEC. 106. FTC ADMINISTRATION AND ENFORCEMENT.**

9 *(a) IN GENERAL.—Except as provided in section 107*
10 *and 108, this title shall be enforced by the Commission as*
11 *if a violation of this title or of any regulation promulgated*
12 *by the Commission under this title were an unfair or decep-*
13 *tive act or practice proscribed under section 18(a)(1)(B) of*
14 *the Federal Trade Commission Act (15 U.S.C.*
15 *57a(a)(1)(B)).*

16 *(b) PENALTIES.—*

17 *(1) TREBLE FINE.—The penalty for a violation*
18 *of this title or of any regulation promulgated by the*
19 *Commission under this title may be increased by the*
20 *Commission to threefold the amount of penalty other-*
21 *wise applicable under section 5 of the Federal Trade*
22 *Commission Act (15 U.S.C. 45).*

23 *(2) PENALTY FOR PATTERN OR PRACTICE OF*
24 *VIOLATIONS.—*

1 (A) *IN GENERAL.*—*If the Commission deter-*
2 *mines that a person has engaged in a pattern or*
3 *practice of activity that violates the provisions of*
4 *this title, the Commission may, in its discretion,*
5 *seek a civil penalty for such pattern or practice*
6 *of violations in an amount, as determined by the*
7 *Commission, of not more than \$3,000,000 for*
8 *each such violation of this title.*

9 (B) *TREATMENT OF SINGLE ACTION OR*
10 *CONDUCT.*—*For purposes of subparagraph (A),*
11 *any single action or conduct that violates this*
12 *title with respect to multiple protected computers*
13 *shall be treated as a single violation.*

14 (c) *ILL-GOTTEN GAINS.*—*The Commission may require*
15 *any person who violates this title to disgorge any ill-gotten*
16 *gains procured through unfair or deceptive acts or practices*
17 *in violation of this title and shall seize any such gains it*
18 *has required to be disgorged.*

19 (d) *ACTIONS BY THE COMMISSION.*—

20 (1) *IN GENERAL.*—*The Commission shall prevent*
21 *any person from violating this title in the same man-*
22 *ner, by the same means, and with the same jurisdic-*
23 *tion, powers, and duties as though all applicable*
24 *terms and provisions of the Federal Trade Commis-*
25 *sion Act (15 U.S.C. 41 et seq.) were incorporated into*

1 *and made a part of this title. Any entity that violates*
2 *any provision of that section is subject to the pen-*
3 *alties and entitled to the privileges and immunities*
4 *provided in the Federal Trade Commission Act in the*
5 *same manner, by the same means, and with the same*
6 *jurisdiction, power, and duties as though all applica-*
7 *ble terms and provisions of the Federal Trade Com-*
8 *mission Act were incorporated into and made a part*
9 *of that section.*

10 (2) *OTHER AUTHORITY NOT AFFECTED.—*Nothing
11 *in this title shall be construed to limit or affect*
12 *in any way the Commission's authority to bring en-*
13 *forcement actions or take any other measure under*
14 *the Federal Trade Commission Act (15 U.S.C. 41 et*
15 *seq.) or any other provision of law.*

16 (e) *NO PRIVATE RIGHT OF ACTION.—*

17 (1) *IN GENERAL.—*This title may not be consid-
18 *ered or construed to provide any private cause of ac-*
19 *tion, including a class action.*

20 (2) *CIVIL ACTION.—*No private civil action relat-
21 *ing to any act or practice governed under this title*
22 *may be commenced or maintained in any State court*
23 *or under State law, including a pendent State claim*
24 *to an action under Federal law.*

1 **SEC. 107. ADDITIONAL ENFORCEMENT.**

2 (a) *ENFORCEMENT BY CERTAIN OTHER AGENCIES.—*

3 *Compliance with this title shall be enforced exclusively*
4 *under—*

5 (1) *section 8 of the Federal Deposit Insurance*
6 *Act (12 U.S.C. 1818), in the case of—*

7 (A) *national banks, and Federal branches*
8 *and Federal agencies of foreign banks, and any*
9 *subsidiaries of such entities (except brokers, deal-*
10 *ers, persons providing insurance, investment*
11 *companies, and investment advisers), by the Of-*
12 *fice of the Comptroller of the Currency;*

13 (B) *member banks of the Federal Reserve*
14 *System (other than national banks), branches*
15 *and agencies of foreign banks (other than Fed-*
16 *eral branches, Federal agencies, and insured*
17 *State branches of foreign banks), commercial*
18 *lending companies owned or controlled by for-*
19 *ign banks, organizations operating under sec-*
20 *tion 25 or 25A of the Federal Reserve Act (12*
21 *U.S.C. 601 and 611), and bank holding compa-*
22 *nies and their nonbank subsidiaries or affiliates*
23 *(except brokers, dealers, persons providing insur-*
24 *ance, investment companies and investment ad-*
25 *visers), by the Board of Governors of the Federal*
26 *Reserve System;*

1 (C) banks insured by the Federal Deposit
2 Insurance Corporation (other than members of
3 the Federal Reserve System), insured State
4 branches of foreign banks, and any subsidiaries
5 of such entities (except brokers, dealers, persons
6 providing insurance, investment companies and
7 investment advisers), by the Board of Directors
8 of the Federal Deposit Insurance Corporation;
9 and

10 (D) savings associations the deposits of
11 which are insured by the Federal Deposit Insur-
12 ance Corporation, and any subsidiaries of such
13 savings associations (except brokers, dealers, per-
14 sons providing insurance, investment companies
15 and investment advisers), by the Director of the
16 Office of Thrift Supervision;

17 (2) the Federal Credit Union Act (12 U.S.C.
18 1751 et seq.) by the Board of the National Credit
19 Union Administration Board with respect to any
20 Federal credit union and any subsidiaries of such a
21 credit union;

22 (3) the Securities and Exchange Act of 1934 (15
23 U.S.C. 78a et seq.) by the Securities and Exchange
24 Commission with respect to—

25 (A) a broker or dealer subject to that Act;

1 (B) an investment company subject to the
2 Investment Company Act of 1940 (15 U.S.C.
3 80a-1 et seq.); and

4 (C) an investment advisor subject to the In-
5 vestment Advisers Act of 1940 (15 U.S.C. 80b-1
6 et seq.); and

7 (4) State insurance law, in the case of any per-
8 son engaged in providing insurance, by the applicable
9 State insurance authority of the State in which the
10 person is domiciled.

11 (b) *EXERCISE OF CERTAIN POWERS.*—For the purpose
12 of the exercise by any agency referred to in subsection (a)
13 of its powers under any Act referred to in that subsection,
14 a violation of this title is deemed to be a violation of a
15 requirement imposed under that Act. In addition to its
16 powers under any provision of law specifically referred to
17 in subsection (a), each of the agencies referred to in that
18 subsection may exercise, for the purpose of enforcing compli-
19 ance with any requirement imposed under this title, any
20 other authority conferred on it by law.

21 **SEC. 108. STATE ENFORCEMENT.**

22 (a) *ENFORCEMENT BY STATE ATTORNEY GEN-*
23 *ERALS.*—

24 (1) *CIVIL ACTIONS.*—In any case in which the
25 attorney general of a State has reason to believe that

1 *an interest of the residents of that State has been or*
2 *is threatened or adversely affected by the engagement*
3 *of any person in a practice that is prohibited under*
4 *this section, the State, as parens patriae, may bring*
5 *a civil action on behalf of the residents of that State*
6 *in a district court of the United States of appropriate*
7 *jurisdiction, or any other court of competent jurisdic-*
8 *tion, to—*

9 *(A) enjoin that practice;*

10 *(B) enforce compliance with this section;*

11 *(C) obtain actual damage and restitution*
12 *on behalf of residents of the State; or*

13 *(D) obtain such other relief as the court*
14 *may consider to be appropriate.*

15 *(2) NOTICE.—*

16 *(A) IN GENERAL.—Before filing an action*
17 *under paragraph (1), the attorney general of a*
18 *State shall provide to the Commission and the*
19 *Attorney General—*

20 *(i) written notice of the action; and*

21 *(ii) a copy of the complaint for the ac-*
22 *tion.*

23 *(B) EXEMPTION.—*

24 *(i) IN GENERAL.—Subparagraph (A)*
25 *shall not apply with respect to the filing of*

1 *an action by an attorney general of a State*
2 *under this subsection, if the attorney gen-*
3 *eral of a State determines that it is not fea-*
4 *sible to provide the notice described in such*
5 *subparagraph before the filing of the action.*

6 *(ii) NOTIFICATION.—In an action de-*
7 *scribed in clause (i), the attorney general of*
8 *a State shall provide notice and a copy of*
9 *the complaint to the Commission and the*
10 *Attorney General at the time the attorney*
11 *general of a State files the action.*

12 *(C) ATTORNEY GENERAL’S RIGHT TO INTER-*
13 *VENE.—After having been notified, as provided*
14 *in subparagraph (A), the United States Attorney*
15 *General shall have the right—*

16 *(i) to file an action;*

17 *(ii) to intervene in the action;*

18 *(iii) upon so intervening, to be heard*
19 *on all matters arising in that action;*

20 *(iv) to remove the action to the appro-*
21 *priate district court of the United States;*

22 *and*

23 *(v) to file petitions for appeal.*

24 *(D) PROHIBITION ON STATE ATTORNEY*
25 *GENERALS IF ATTORNEY GENERAL ACTS.—If the*

1 *Attorney General institutes an action under this*
2 *Act, no attorney general of a State or official or*
3 *agency of a State may bring an action under*
4 *this subsection for any violation of subsection (a)*
5 *alleged in the complaint.*

6 (E) *PROHIBITION ON STATE ATTORNEY*
7 *GENERALS IF COMMISSION ACTS.—If the Com-*
8 *mission institutes an action under this sub-*
9 *section, no attorney general of a State or official*
10 *or agency of a State may bring an action under*
11 *this subsection for any violation of this section*
12 *alleged in the complaint.*

13 (b) *RULE OF CONSTRUCTION.—For purposes of bring-*
14 *ing any civil action under this section, nothing in this Act*
15 *shall be construed to prevent an attorney general of a State*
16 *from exercising the powers conferred on such attorney gen-*
17 *eral by the laws of that State to—*

- 18 (1) *conduct investigations;*
19 (2) *administer oaths or affirmations; or*
20 (3) *compel the attendance of witnesses or the*
21 *production of documentary and other evidence.*

22 (c) *VENUE; SERVICE OF PROCESS.—*

23 (1) *VENUE.—Any action brought under sub-*
24 *section (a) may be brought in the district court of the*
25 *United States that meets applicable requirements re-*

1 *lating to venue under section 1391 of title 28, United*
2 *States Code.*

3 (2) *SERVICE OF PROCESS.*—*In an action brought*
4 *under subsection (a), process may be served in any*
5 *district in which the defendant—*

6 (A) *is an inhabitant; or*

7 (B) *may be found.*

8 **SEC. 109. EFFECT ON OTHER LAWS.**

9 (a) *FEDERAL LAW.*—*Nothing in this title shall be con-*
10 *strued to limit or affect in any way the Commission's au-*
11 *thority to bring enforcement actions or take any other meas-*
12 *ures under the Federal Trade Commission Act or any other*
13 *provision of law.*

14 (b) *PREEMPTION OF STATE OR LOCAL LAW.*—*This*
15 *title supersedes any provision of a statute, regulation, or*
16 *rule, and any requirement, prohibition, or remedy under*
17 *the law of any State or political subdivision thereof that*
18 *relates to, or affects the installation or functioning of soft-*
19 *ware or cookies.*

20 **SEC. 110. LIMITATIONS ON LIABILITY.**

21 (a) *LAW ENFORCEMENT AUTHORITY.*—*Sections 102,*
22 *103, 104, and 105 shall not apply to the transmission, in-*
23 *stallation, or execution of a computer program in compli-*
24 *ance with a law enforcement, investigatory, national secu-*
25 *rity, or regulatory agency or department of the United*

1 *States, or any State in response to a request or demand*
2 *made under authority granted to that agency or depart-*
3 *ment, including—*

4 (1) *a warrant issued under the Federal Rules of*
5 *Criminal Procedure;*

6 (2) *an equivalent State warrant; or*

7 (3) *a court order or other lawful process.*

8 (b) *PASSIVE TRANSMISSION, HOSTING, OR LINKING.—*

9 *A person shall not be deemed to have violated any provision*
10 *of this title solely because the person provided—*

11 (1) *the Internet connection, telephone connection,*
12 *or other transmission or routing function through*
13 *which software was delivered to a protected computer*
14 *for installation;*

15 (2) *the storage or hosting of software or of an*
16 *Internet website through which software was made*
17 *available for installation to a protected computer; or*

18 (3) *an information location tool, such as a direc-*
19 *tory, index, reference, pointer, or hypertext link,*
20 *through which a user of a protected computer located*
21 *software available for installation.*

22 (c) *EXCEPTION RELATING TO SECURITY.—Nothing in*
23 *this title shall apply to—*

24 (1) *any monitoring of, or interaction with, a*
25 *consumer's Internet or other network connection or*

1 *service, or a protected computer, by a telecommuni-*
2 *cations carrier, cable operator, computer hardware or*
3 *software provider, or provider of information service*
4 *or interactive computer service, to the extent that such*
5 *monitoring or interaction is for network or computer*
6 *security purposes, network management, mainte-*
7 *nance, diagnostics, technical support or repair, or for*
8 *the detection or prevention of fraudulent activities; or*

9 *(2) a discrete interaction with a protected com-*
10 *puter by a provider of computer software solely to de-*
11 *termine whether the user of the computer is author-*
12 *ized to use such software, that occurs upon—*

13 *(A) initialization of the software; or*

14 *(B) an affirmative request by the owner or*
15 *authorized user for an update of, addition to, or*
16 *technical service for, the software.*

17 *(d) LIMITATION ON LIABILITY.—A manufacturer or re-*
18 *tailer of computer equipment shall not be liable under this*
19 *title to the extent that the manufacturer or retailer is pro-*
20 *viding third party branded software that is installed on the*
21 *equipment the manufacturer or retailer is manufacturing*
22 *or selling.*

23 *(e) COMPLIANCE WITH LAW.—No person shall be liable*
24 *under this title for engaging in any activity that is ex-*

1 *pressly permissible under any other provision of Federal*
2 *law.*

3 (f) *COMMISSION AUTHORITY.*—*In addition to the limi-*
4 *tation of liability specified in this section, the Commission*
5 *may by regulation establish additional limitations or excep-*
6 *tions upon the finding that such limitations or exceptions*
7 *are reasonably necessary to promote the public interest.*

8 **SEC. 111. DEFINITIONS.**

9 *In this title:*

10 (1) *AUTHORIZED USER.*—*The term “authorized*
11 *user”, when used with respect to a computer, means*
12 *the owner or lessee of a computer, or someone using*
13 *or accessing a computer with the authorization of the*
14 *owner or lessee.*

15 (2) *COMMISSION.*—*The term “Commission”*
16 *means the Federal Trade Commission.*

17 (3) *COOKIE.*—*The term “cookie” means a text*
18 *file—*

19 (A) *that is placed on a computer by, or on*
20 *behalf of, an Internet service provider, inter-*
21 *active computer service, or Internet website; and*

22 (B) *the sole function of which is to record*
23 *information that can be read or recognized when*
24 *the user of the computer subsequently accesses*

1 *particular websites or online locations or serv-*
2 *ices.*

3 (4) *PERSON.*—*The term “person” has the mean-*
4 *ing given that term in section 3(32) of the Commu-*
5 *nications Act of 1934 (47 U.S.C. 153(32)).*

6 (5) *PROTECTED COMPUTER.*—*The term “pro-*
7 *ected computer” has the meaning given that term in*
8 *section 1030(e)(2)(B) of title 18, United States Code.*

9 (6) *PERSONAL INFORMATION.*—*The term “per-*
10 *sonal information” means any of the following infor-*
11 *mation about any authorized user of a protected com-*
12 *puter:*

13 (A) *Sensitive personal information about*
14 *the authorized user of a protected computer.*

15 (B) *Information concerning the contents of*
16 *files, data, software, or other information know-*
17 *ingly saved or installed by the authorized user of*
18 *a protected computer, exclusive of data that pro-*
19 *vide a purely technical function.*

20 (C) *Information concerning the contents of*
21 *communications sent by a user of a protected*
22 *computer from that computer to any other com-*
23 *puter.*

1 (D) Passwords, keystrokes, or other informa-
2 tion specific to an authorized user's use of a pro-
3 tected computer.

4 (7) SENSITIVE PERSONAL INFORMATION.—

5 (A) IN GENERAL.—Except as provided in
6 subparagraph (B), the term “sensitive personal
7 information” means an individual's name, ad-
8 dress, or telephone number combined with 1 or
9 more of the following data elements related to
10 that individual:

11 (i) Social security number, taxpayer
12 identification number, or an employer iden-
13 tification number that is the same as or is
14 derived from the social security number of
15 that individual.

16 (ii) Financial account number, or
17 credit card or debit card number of such in-
18 dividual, combined with any required secu-
19 rity code, access code, or password that
20 would permit access to such individual's ac-
21 count.

22 (iii) State driver's license identifica-
23 tion number or State resident identification
24 number.

1 (B) *PUBLIC RECORDS.*—*Nothing in this*
2 *title prohibits a person from obtaining, aggreg-*
3 *gating, or using sensitive personal information it*
4 *lawfully obtains from public records in a man-*
5 *ner that does not violate this title.*

6 (8) *SOFTWARE.*—*The term “software” means*
7 *any program designed to cause a computer to perform*
8 *a function or functions, but does not include a cookie.*

9 (9) *UNFAIR OR DECEPTIVE ACT OR PRACTICE.*—
10 *The term “unfair or deceptive act or practice” has the*
11 *same meaning as when used in section 5 of the Fed-*
12 *eral Trade Commission Act (15 U.S.C. 45).*

13 **SEC. 112. CRIMINAL PENALTIES FOR CERTAIN UNAUTHOR-**
14 **IZED ACTIVITIES RELATING TO COMPUTERS.**

15 (a) *IN GENERAL.*—*Chapter 47 of title 18, United*
16 *States Code, is amended by inserting after section 1030 the*
17 *following:*

18 **“§ 1030A. Illicit indirect use of protected computers**

19 “(a) *FURTHERANCE OF CRIMINAL OFFENSE.*—*Who-*
20 *ever intentionally accesses a protected computer without au-*
21 *thorization, or exceeds authorized access to a protected com-*
22 *puter, by causing a computer program or code to be copied*
23 *onto the protected computer, and intentionally uses that*
24 *program or code in furtherance of another Federal criminal*

1 *offense shall be fined under this title or imprisoned not more*
2 *than 5 years, or both.*

3 “(b) *SECURITY PROTECTION.*—Whoever intentionally
4 *accesses a protected computer without authorization, or ex-*
5 *ceeds authorized access to a protected computer, by causing*
6 *a computer program or code to be copied onto the protected*
7 *computer, and by means of that program or code inten-*
8 *tionally impairs the security protection of the protected*
9 *computer shall be fined under this title or imprisoned not*
10 *more than 2 years, or both.*

11 “(c) *INDIVIDUAL EXEMPTION.*—A person shall not vio-
12 *late this section who solely provides—*

13 “(1) *an Internet connection, telephone connec-*
14 *tion, or other transmission or routing function*
15 *through which software is delivered to a protected*
16 *computer for installation;*

17 “(2) *the storage or hosting of software, or of an*
18 *Internet website, through which software is made*
19 *available for installation to a protected computer; or*

20 “(3) *an information location tool, such as a di-*
21 *rectory, index, reference, pointer, or hypertext link,*
22 *through which a user of a protected computer locates*
23 *software available for installation.*

24 “(d) *NETWORK EXEMPTION.*—A provider of a network
25 *or online service that an authorized user of a protected com-*

1 *puter uses or subscribes to shall not violate this section by*
2 *any monitoring or, interaction with, or installation of soft-*
3 *ware for the purpose of—*

4 “(1) *protecting the security of the network, serv-*
5 *ice, or computer;*

6 “(2) *facilitating diagnostics, technical support,*
7 *maintenance, network management, or repair; or*

8 “(3) *preventing or detecting unauthorized, fraud-*
9 *ulent, or otherwise unlawful uses of the network or*
10 *service.*

11 “(e) *EXCLUSIVE JURISDICTION.—No person may bring*
12 *a civil action under the law of any State if such action*
13 *is premised in whole or in part upon the defendant’s viola-*
14 *tion of this section.*

15 “(f) *DEFINITIONS.—As used in this section:*

16 “(1) *COMPUTER; PROTECTED COMPUTER.—The*
17 *terms ‘computer’ or ‘protected computer’ have the*
18 *meanings given such terms in section 1030(e) of this*
19 *title.*

20 “(2) *STATE.—The term ‘State’ includes each of*
21 *the several States, the District of Columbia, Puerto*
22 *Rico, and any other territory or possession of the*
23 *United States.”.*

24 “(b) *CONFORMING AMENDMENT.—The table of sections*
25 *at the beginning of chapter 47 of title 18, United States*

1 *Code, is amended by inserting after the item relating to*
2 *section 1030 the following new item:*

“1030A. Illicit indirect use of protected computers.”.

3 **SEC. 112. EFFECTIVE DATE.**

4 *This title shall take effect 180 days after the date of*
5 *enactment of this Act.*

6 **TITLE II—SAFE WEB**

7 **SEC. 201. SHORT TITLE; FINDINGS; PURPOSE.**

8 *(a) SHORT TITLE.—This title may be cited as the*
9 *“Undertaking Spam, Spyware, And Fraud Enforcement*
10 *With Enforcers beyond Borders Act of 2005” or the “U.S.*
11 *SAFE WEB Act of 2005”.*

12 *(b) FINDINGS.—The Congress finds the following:*

13 *(1) The Federal Trade Commission protects con-*
14 *sumers from fraud and deception. Cross-border fraud*
15 *and deception are growing international problems*
16 *that affect American consumers and businesses.*

17 *(2) The development of the Internet and im-*
18 *provements in telecommunications technologies have*
19 *brought significant benefits to consumers. At the same*
20 *time, they have also provided unprecedented opportu-*
21 *nities for those engaged in fraud and deception to es-*
22 *tablish operations in one country and victimize a*
23 *large number of consumers in other countries.*

24 *(3) An increasing number of consumer com-*
25 *plaints collected in the Consumer Sentinel database*

1 *maintained by the Commission, and an increasing*
2 *number of cases brought by the Commission, involve*
3 *foreign consumers, foreign businesses or individuals,*
4 *or assets or evidence located outside the United States.*

5 *(4) The Commission has legal authority to rem-*
6 *edy law violations involving domestic and foreign*
7 *wrongdoers, pursuant to the Federal Trade Commis-*
8 *sion Act. The Commission's ability to obtain effective*
9 *relief using this authority, however, may face prac-*
10 *tical impediments when wrongdoers, victims, other*
11 *witnesses, documents, money and third parties in-*
12 *volved in the transaction are widely dispersed in*
13 *many different jurisdictions. Such circumstances*
14 *make it difficult for the Commission to gather all the*
15 *information necessary to detect injurious practices, to*
16 *recover offshore assets for consumer redress, and to*
17 *reach conduct occurring outside the United States*
18 *that affects United States consumers.*

19 *(5) Improving the ability of the Commission and*
20 *its foreign counterparts to share information about*
21 *cross-border fraud and deception, to conduct joint and*
22 *parallel investigations, and to assist each other is*
23 *critical to achieve more timely and effective enforce-*
24 *ment in cross-border cases.*

1 (c) *PURPOSE.*—*The purpose of this title is to enhance*
2 *the ability of the Federal Trade Commission to protect con-*
3 *sumers from illegal spam, spyware, and cross-border fraud*
4 *and deception and other consumer protection law viola-*
5 *tions.*

6 **SEC. 202. FOREIGN LAW ENFORCEMENT AGENCY DEFINED.**

7 *Section 4 of the Federal Trade Commission Act (15*
8 *U.S.C. 44) is amended by adding at the end the following:*

9 “*‘Foreign law enforcement agency’ means—*

10 “(1) *any agency or judicial authority of a for-*
11 *foreign government, including a foreign state, a political*
12 *subdivision of a foreign state, or a multinational or-*
13 *ganization constituted by and comprised of foreign*
14 *states, that is vested with law enforcement or inves-*
15 *tigative authority in civil, criminal, or administra-*
16 *tive matters; and*

17 “(2) *any multinational organization, to the ex-*
18 *tent that it is acting on behalf of an entity described*
19 *in paragraph (1).”.*

20 **SEC. 203. AVAILABILITY OF REMEDIES.**

21 *Section 5(a) of the Federal Trade Commission Act (15*
22 *U.S.C. 45(a)) is amended by adding at the end the fol-*
23 *lowing:*

1 “(4)(A) For purposes of subsection (a), the term
2 ‘unfair or deceptive acts or practices’ includes such
3 acts or practices involving foreign commerce that—

4 “(i) cause or are likely to cause reasonably
5 foreseeable injury within the United States; or

6 “(ii) involve material conduct occurring
7 within the United States.

8 “(B) All remedies available to the Commission
9 with respect to unfair and deceptive acts or practices
10 shall be available for acts and practices described in
11 this paragraph, including restitution to domestic or
12 foreign victims.”.

13 **SEC. 204. POWERS OF THE COMMISSION.**

14 (a) *PUBLICATION OF INFORMATION; REPORTS.*—Sec-
15 tion 6(f) of the Federal Trade Commission Act (15 U.S.C.
16 46(f)) is amended—

17 (1) by inserting “(1)” after “such information”
18 the first place it appears; and

19 (2) by striking “purposes.” and inserting “pur-
20 poses, and (2) to any officer or employee of any for-
21 eign law enforcement agency under the same cir-
22 cumstances that making material available to foreign
23 law enforcement agencies is permitted under section
24 21(b).”.

1 **(b) OTHER POWERS OF THE COMMISSION.**—Section 6
2 *of the Federal Trade Commission Act (15 U.S.C. 46) is fur-*
3 *ther amended by inserting after subsection (i) and before*
4 *the proviso the following:*

5 **“(j) INVESTIGATIVE ASSISTANCE FOR FOREIGN LAW**
6 **ENFORCEMENT AGENCIES.**—

7 **“(1) IN GENERAL.**—Upon a written request from
8 *a foreign law enforcement agency to provide assist-*
9 *ance in accordance with this subsection, if the re-*
10 *questing agency states that it is investigating, or en-*
11 *gaging in enforcement proceedings against, possible*
12 *violations of laws prohibiting fraudulent or deceptive*
13 *commercial practices, or other practices substantially*
14 *similar to practices prohibited by any provision of*
15 *the laws administered by the Commission, other than*
16 *Federal antitrust laws (as defined in section 12(5) of*
17 *the International Antitrust Enforcement Assistance*
18 *Act of 1994 (15 U.S.C. 6211(5))), to provide the as-*
19 *sistance described in paragraph (2) without requiring*
20 *that the conduct identified in the request constitute a*
21 *violation of the laws of the United States.*

22 **“(2) TYPE OF ASSISTANCE.**—In providing assist-
23 *ance to a foreign law enforcement agency under this*
24 *subsection, the Commission may—*

1 “(A) *conduct such investigation as the Com-*
2 *mission deems necessary to collect information*
3 *and evidence pertinent to the request for assist-*
4 *ance, using all investigative powers authorized*
5 *by this title; and*

6 “(B) *when the request is from an agency*
7 *acting to investigate or pursue the enforcement of*
8 *civil laws, or when the Attorney General refers*
9 *a request to the Commission from an agency act-*
10 *ing to investigate or pursue the enforcement of*
11 *criminal laws, seek and accept appointment by*
12 *a United States district court of Commission at-*
13 *torneys to provide assistance to foreign and*
14 *international tribunals and to litigants before*
15 *such tribunals on behalf of a foreign law enforce-*
16 *ment agency pursuant to section 1782 of title 28,*
17 *United States Code.*

18 “(3) *CRITERIA FOR DETERMINATION.—In decid-*
19 *ing whether to provide such assistance, the Commis-*
20 *sion shall consider all relevant factors, including—*

21 “(A) *whether the requesting agency has*
22 *agreed to provide or will provide reciprocal as-*
23 *istance to the Commission;*

1 “(B) whether compliance with the request
2 would prejudice the public interest of the United
3 States; and

4 “(C) whether the requesting agency’s inves-
5 tigation or enforcement proceeding concerns acts
6 or practices that cause or are likely to cause in-
7 jury to a significant number of persons.

8 “(4) INTERNATIONAL AGREEMENTS.—If a foreign
9 law enforcement agency has set forth a legal basis for
10 requiring execution of an international agreement as
11 a condition for reciprocal assistance, or as a condi-
12 tion for provision of materials or information to the
13 Commission, the Commission, with prior approval
14 and ongoing oversight of the Secretary of State, and
15 with final approval of the agreement by the Secretary
16 of State, may negotiate and conclude an international
17 agreement, in the name of either the United States or
18 the Commission, for the purpose of obtaining such as-
19 sistance, materials, or information. The Commission
20 may undertake in such an international agreement
21 to—

22 “(A) provide assistance using the powers set
23 forth in this subsection;

1 “(B) disclose materials and information in
2 accordance with subsection (f) and section 21(b);
3 and

4 “(C) engage in further cooperation, and
5 protect materials and information received from
6 disclosure, as authorized by this title.

7 “(5) *ADDITIONAL AUTHORITY.*—The authority
8 provided by this subsection is in addition to, and not
9 in lieu of, any other authority vested in the Commis-
10 sion or any other officer of the United States.

11 “(6) *LIMITATION.*—The authority granted by
12 this subsection shall not authorize the Commission to
13 take any action or exercise any power with respect to
14 a bank, a savings and loan institution described in
15 section 18(f)(3) (15 U.S.C. 57a(f)(3)), a Federal cred-
16 it union described in section 18(f)(4) (15 U.S.C.
17 57a(f)(4)), or a common carrier subject to the Act to
18 regulate commerce, except in accordance with the un-
19 designated proviso following the last designated sub-
20 section of section 6 (15 U.S.C. 46).

21 “(7) *ASSISTANCE TO CERTAIN COUNTRIES.*—The
22 Commission may not provide investigative assistance
23 under this subsection to a foreign law enforcement
24 agency from a foreign state that the Secretary of
25 State has determined, in accordance with section 6(j)

1 *of the Export Administration Act of 1979 (50 U.S.C.*
2 *App. 2405(j)), has repeatedly provided support for*
3 *acts of international terrorism, unless and until such*
4 *determination is rescinded pursuant to section 6(j)(4)*
5 *of that Act (50 U.S.C. App.2405(j)(4)).*

6 “(k) *REFERRAL OF EVIDENCE FOR CRIMINAL PRO-*
7 *CEEDINGS.—*

8 “(1) *IN GENERAL.—Whenever the Commission*
9 *obtains evidence that any person, partnership, or cor-*
10 *poration, either domestic or foreign, has engaged in*
11 *conduct that may constitute a violation of Federal*
12 *criminal law, to transmit such evidence to the Attor-*
13 *ney General, who may institute criminal proceedings*
14 *under appropriate statutes. Nothing in this para-*
15 *graph affects any other authority of the Commission*
16 *to disclose information.*

17 “(2) *INTERNATIONAL INFORMATION.—The Com-*
18 *mission shall endeavor to ensure, with respect to*
19 *memoranda of understanding and international*
20 *agreements it may conclude, that material it has ob-*
21 *tained from foreign law enforcement agencies acting*
22 *to investigate or pursue the enforcement of foreign*
23 *criminal laws may be used for the purpose of inves-*
24 *tigation, prosecution, or prevention of violations of*
25 *United States criminal laws.*

1 “(l) *EXPENDITURES FOR COOPERATIVE ARRANGE-*
2 *MENTS.—To expend appropriated funds for—*

3 “(1) *operating expenses and other costs of bilat-*
4 *eral and multilateral cooperative law enforcement*
5 *groups conducting activities of interest to the Com-*
6 *mission and in which the Commission participates;*
7 *and*

8 “(2) *expenses for consultations and meetings*
9 *hosted by the Commission with foreign government*
10 *agency officials, members of their delegations, appro-*
11 *priate representatives and staff to exchange views con-*
12 *cerning developments relating to the Commission’s*
13 *mission, development and implementation of coopera-*
14 *tion agreements, and provision of technical assistance*
15 *for the development of foreign consumer protection or*
16 *competition regimes, such expenses to include nec-*
17 *essary administrative and logistic expenses and the*
18 *expenses of Commission staff and foreign invitees in*
19 *attendance at such consultations and meetings includ-*
20 *ing—*

21 “(A) *such incidental expenses as meals*
22 *taken in the course of such attendance;*

23 “(B) *any travel and transportation to or*
24 *from such meetings; and*

1 “(C) any other related lodging or subsist-
2 ence.”.

3 (c) *AUTHORIZATION OF APPROPRIATIONS.*—*The Fed-*
4 *eral Trade Commission is authorized to expend appro-*
5 *priated funds not to exceed \$100,000 per fiscal year for pur-*
6 *poses of section 6(l) of the Federal Trade Commission Act*
7 *(15 U.S.C. 46(l)) (as added by subsection (b) of this sec-*
8 *tion), including operating expenses and other costs of the*
9 *following bilateral and multilateral cooperative law enforce-*
10 *ment agencies and organizations:*

11 (1) *The International Consumer Protection and*
12 *Enforcement Network.*

13 (2) *The International Competition Network.*

14 (3) *The Mexico-U.S.-Canada Health Fraud Task*
15 *Force.*

16 (4) *Project Emptor.*

17 (5) *The Toronto Strategic Partnership and other*
18 *regional partnerships with a nexus in a Canadian*
19 *province.*

20 (d) *CONFORMING AMENDMENT.*—*Section 6 of the Fed-*
21 *eral Trade Commission Act (15 U.S.C. 46) is amended by*
22 *striking “clauses (a) and (b)” in the proviso following sub-*
23 *section (l) (as added by subsection (b) of this section) and*
24 *inserting “subsections (a), (b), and (j)”.*

1 **SEC. 205. REPRESENTATION IN FOREIGN LITIGATION.**

2 *Section 16 of the Federal Trade Commission Act (15*
3 *U.S.C. 56) is amended by adding at the end the following:*

4 *“(c) FOREIGN LITIGATION.—*

5 *“(1) COMMISSION ATTORNEYS.—With the concur-*
6 *rence of the Attorney General, the Commission may*
7 *designate Commission attorneys to assist the Attorney*
8 *General in connection with litigation in foreign*
9 *courts on particular matters in which the Commis-*
10 *sion has an interest.*

11 *“(2) REIMBURSEMENT FOR FOREIGN COUN-*
12 *SEL.—The Commission is authorized to expend ap-*
13 *propriated funds, upon agreement with the Attorney*
14 *General, to reimburse the Attorney General for the re-*
15 *tention of foreign counsel for litigation in foreign*
16 *courts and for expenses related to litigation in foreign*
17 *courts in which the Commission has an interest.*

18 *“(3) LIMITATION ON USE OF FUNDS.—Nothing*
19 *in this subsection authorizes the payment of claims or*
20 *judgments from any source other than the permanent*
21 *and indefinite appropriation authorized by section*
22 *1304 of title 31, United States Code.*

23 *“(4) OTHER AUTHORITY.—The authority pro-*
24 *vided by this subsection is in addition to any other*
25 *authority of the Commission or the Attorney Gen-*
26 *eral.”.*

1 **SEC. 206. SHARING INFORMATION WITH FOREIGN LAW EN-**
2 **FORCEMENT AGENCIES.**

3 (a) *MATERIAL OBTAINED PURSUANT TO COMPULSORY*
4 *PROCESS.*—*Section 21(b)(6) of the Federal Trade Commis-*
5 *sion Act (15 U.S.C. 57b-2(b)(6)) is amended by adding at*
6 *the end “The custodian may make such material available*
7 *to any foreign law enforcement agency upon the prior cer-*
8 *tification of an appropriate official of any such foreign law*
9 *enforcement agency, either by a prior agreement or memo-*
10 *randum of understanding with the Commission or by other*
11 *written certification, that such material will be maintained*
12 *in confidence and will be used only for official law enforce-*
13 *ment purposes, if—*

14 “(A) *the foreign law enforcement agency has set*
15 *forth a bona fide legal basis for its authority to main-*
16 *tain the material in confidence;*

17 “(B) *the materials are to be used for purposes of*
18 *investigating, or engaging in enforcement proceedings*
19 *related to, possible violations of—*

20 “(i) *foreign laws prohibiting fraudulent or*
21 *deceptive commercial practices, or other practices*
22 *substantially similar to practices prohibited by*
23 *any law administered by the Commission;*

24 “(ii) *a law administered by the Commis-*
25 *sion, if disclosure of the material would further*

1 *a Commission investigation or enforcement pro-*
2 *ceeding; or*

3 *“(iii) with the approval of the Attorney*
4 *General, other foreign criminal laws, if such for-*
5 *foreign criminal laws are offenses defined in or cov-*
6 *ered by a criminal mutual legal assistance treaty*
7 *in force between the government of the United*
8 *States and the foreign law enforcement agency’s*
9 *government;*

10 *“(C) the appropriate Federal banking agency (as*
11 *defined in section 3(q) of the Federal Deposit Insur-*
12 *ance Act (12 U.S.C. 1813(q)) or, in the case of a Fed-*
13 *eral credit union, the National Credit Union Admin-*
14 *istration, has given its prior approval if the materials*
15 *to be provided under subparagraph (B) are requested*
16 *by the foreign law enforcement agency for the purpose*
17 *of investigating, or engaging in enforcement pro-*
18 *ceedings based on, possible violations of law by a*
19 *bank, a savings and loan institution described in sec-*
20 *tion 18(f)(3) of the Federal Trade Commission Act*
21 *(15 U.S.C. 57a(f)(3)), or a Federal credit union de-*
22 *scribed in section 18(f)(4) of the Federal Trade Com-*
23 *mission Act (15 U.S.C. 57a(f)(4)); and*

24 *“(D) the foreign law enforcement agency is not*
25 *from a foreign state that the Secretary of State has*

1 *determined, in accordance with section 6(j) of the Ex-*
2 *port Administration Act of 1979 (50 U.S.C. App.*
3 *2405(j)), has repeatedly provided support for acts of*
4 *international terrorism, unless and until such deter-*
5 *mination is rescinded pursuant to section 6(j)(4) of*
6 *that Act (50 U.S.C. App. 2405(j)(4)).*

7 *Nothing in the preceding sentence authorizes the disclosure*
8 *of material obtained in connection with the administration*
9 *of the Federal antitrust laws or foreign antitrust laws (as*
10 *defined in paragraphs (5) and (7), respectively, of section*
11 *12 of the International Antitrust Enforcement Assistance*
12 *Act of 1994 (15 U.S.C. 6211)) to any officer or employee*
13 *of a foreign law enforcement agency.”.*

14 **(b) INFORMATION SUPPLIED BY AND ABOUT FOREIGN**
15 **SOURCES.**—*Section 21(f) of the Federal Trade Commission*
16 *Act (15 U.S.C. 57b-2(f)) is amended to read as follows:*

17 **“(f) EXEMPTION FROM PUBLIC DISCLOSURE.—**

18 **“(1) IN GENERAL.—***Any material which is re-*
19 *ceived by the Commission in any investigation, a*
20 *purpose of which is to determine whether any person*
21 *may have violated any provision of the laws adminis-*
22 *tered by the Commission, and which is provided pur-*
23 *suant to any compulsory process under this title or*
24 *which is provided voluntarily in place of such com-*
25 *pulsory process shall not be required to be disclosed*

1 *under section 552 of title 5, United States Code, or*
2 *any other provision of law, except as provided in*
3 *paragraph (2)(B) of this section.*

4 “(2) *MATERIAL OBTAINED FROM A FOREIGN*
5 *SOURCE.—*

6 “(A) *IN GENERAL.—Except as provided in*
7 *subparagraph (B) of this paragraph, the Com-*
8 *mission shall not be required to disclose under*
9 *section 552 of title 5, United States Code, or any*
10 *other provision of law—*

11 “(i) *any material obtained from a for-*
12 *ign law enforcement agency or other for-*
13 *ign government agency, if the foreign law*
14 *enforcement agency or other foreign govern-*
15 *ment agency has requested confidential*
16 *treatment, or has precluded such disclosure*
17 *under other use limitations, as a condition*
18 *of providing the material;*

19 “(ii) *any material reflecting a con-*
20 *sumer complaint obtained from any other*
21 *foreign source, if that foreign source sup-*
22 *plying the material has requested confiden-*
23 *tial treatment as a condition of providing*
24 *the material; or*

1 “(iii) any material reflecting a con-
2 sumer complaint submitted to a Commis-
3 sion reporting mechanism sponsored in part
4 by foreign law enforcement agencies or other
5 foreign government agencies.

6 “(B) SAVINGS PROVISION.—Nothing in this
7 subsection shall authorize the Commission to
8 withhold information from the Congress or pre-
9 vent the Commission from complying with an
10 order of a court of the United States in an ac-
11 tion commenced by the United States or the
12 Commission.”.

13 **SEC. 207. CONFIDENTIALITY; DELAYED NOTICE OF PROC-**
14 **ESS.**

15 (a) *IN GENERAL.*—The Federal Trade Commission Act
16 (15 U.S.C. 41 et seq.) is amended by inserting after section
17 21 the following:

18 **“SEC. 21A. CONFIDENTIALITY AND DELAYED NOTICE OF**
19 **COMPULSORY PROCESS FOR CERTAIN THIRD**
20 **PARTIES.**

21 “(a) *APPLICATION WITH OTHER LAWS.*—The Right to
22 Financial Privacy Act (12 U.S.C. 3401 et seq.) and chapter
23 121 of title 18, United States Code, shall apply with respect
24 to the Commission, except as otherwise provided in this sec-
25 tion.

1 “(b) *PROCEDURES FOR DELAY OF NOTIFICATION OR*
2 *PROHIBITION OF DISCLOSURE.*—*The procedures for delay*
3 *of notification or prohibition of disclosure under the Right*
4 *to Financial Privacy Act (12 U.S.C. 3401 et seq.) and chap-*
5 *ter 121 of title 18, United States Code, including procedures*
6 *for extensions of such delays or prohibitions, shall be avail-*
7 *able to the Commission, provided that, notwithstanding any*
8 *provision therein—*

9 “(1) *a court may issue an order delaying notifi-*
10 *cation or prohibiting disclosure (including extending*
11 *such an order) in accordance with the procedures of*
12 *section 1109 of the Right to Financial Privacy Act*
13 *(12 U.S.C. 3409) (if notification would otherwise be*
14 *required under that Act), or section 2705 of title 18,*
15 *United States Code, (if notification would otherwise*
16 *be required under chapter 121 of that title), if the*
17 *presiding judge or magistrate judge finds that there*
18 *is reason to believe that such notification or disclosure*
19 *may cause an adverse result as defined in subsection*
20 *(g) of this section; and*

21 “(2) *if notification would otherwise be required*
22 *under chapter 121 of title 18, United States Code, the*
23 *Commission may delay notification (including ex-*
24 *tending such a delay) upon the execution of a written*
25 *certification in accordance with the procedures of sec-*

1 *tion 2705 of that title if the Commission finds that*
2 *there is reason to believe that notification may cause*
3 *an adverse result as defined in subsection (g) of this*
4 *section.*

5 *“(c) EX PARTE APPLICATION BY COMMISSION.—*

6 *“(1) IN GENERAL.—If neither notification nor*
7 *delayed notification by the Commission is required*
8 *under the Right to Financial Privacy Act (12 U.S.C.*
9 *3401 et seq.) or chapter 121 of title 18, United States*
10 *Code, the Commission may apply ex parte to a pre-*
11 *siding judge or magistrate judge for an order prohib-*
12 *iting the recipient of compulsory process issued by the*
13 *Commission from disclosing to any other person the*
14 *existence of the process, notwithstanding any law or*
15 *regulation of the United States, or under the constitu-*
16 *tion, or any law or regulation, of any State, political*
17 *subdivision of a State, territory of the United States,*
18 *or the District of Columbia. The presiding judge or*
19 *magistrate judge may enter such an order granting*
20 *the requested prohibition of disclosure for a period not*
21 *to exceed 60 days if there is reason to believe that dis-*
22 *closure may cause an adverse result as defined in sub-*
23 *section (g). The presiding judge or magistrate judge*
24 *may grant extensions of this order of up to 30 days*
25 *each in accordance with this subsection, except that in*

1 *no event shall the prohibition continue in force for*
2 *more than a total of 9 months.*

3 “(2) *APPLICATION.*—*This subsection shall apply*
4 *only in connection with compulsory process issued by*
5 *the Commission where the recipient of such process is*
6 *not a subject of the investigation or proceeding at the*
7 *time such process is issued.*

8 “(3) *LIMITATION.*—*No order issued under this*
9 *subsection shall prohibit any recipient from disclosing*
10 *to a Federal agency that the recipient has received*
11 *compulsory process from the Commission.*

12 “(d) *NO LIABILITY FOR FAILURE TO NOTIFY.*—*If nei-*
13 *ther notification nor delayed notification by the Commis-*
14 *sion is required under the Right to Financial Privacy Act*
15 *(12 U.S.C. 3401 et seq.) or chapter 121 of title 18, United*
16 *States Code, the recipient of compulsory process issued by*
17 *the Commission under this Act shall not be liable under*
18 *any law or regulation of the United States, or under the*
19 *constitution, or any law or regulation, of any State, polit-*
20 *ical subdivision of a State, territory of the United States,*
21 *or the District of Columbia, or under any contract or other*
22 *legally enforceable agreement, for failure to provide notice*
23 *to any person that such process has been issued or that the*
24 *recipient has provided information in response to such*

1 *process. The preceding sentence does not exempt any recipi-*
2 *ent from liability for—*

3 *“(1) the underlying conduct reported;*

4 *“(2) a failure to comply with the record reten-*
5 *tion requirements under section 1104(c) of the Right*
6 *to Financial Privacy Act (12 U.S.C. 3404), where ap-*
7 *plicable; or*

8 *“(3) any failure to comply with any obligation*
9 *the recipient may have to disclose to a Federal agency*
10 *that the recipient has received compulsory process*
11 *from the Commission or intends to provide or has*
12 *provided information to the Commission in response*
13 *to such process.*

14 *“(e) VENUE AND PROCEDURE.—*

15 *“(1) IN GENERAL.—All judicial proceedings ini-*
16 *tiated by the Commission under the Right to Finan-*
17 *cial Privacy Act (12 U.S.C. 3401 et seq.), chapter 121*
18 *of title 18, United States Code, or this section may*
19 *be brought in the United States District Court for the*
20 *District of Columbia or any other appropriate United*
21 *States District Court. All ex parte applications by the*
22 *Commission under this section related to a single in-*
23 *vestigation may be brought in a single proceeding.*

24 *“(2) In camera proceedings.—Upon application*
25 *by the Commission, all judicial proceedings pursuant*

1 *to this section shall be held in camera and the records*
2 *thereof sealed until expiration of the period of delay*
3 *or such other date as the presiding judge or mag-*
4 *istrate judge may permit.*

5 *“(f) SECTION NOT TO APPLY TO ANTITRUST INVES-*
6 *TIGATIONS OR PROCEEDINGS.—This section shall not apply*
7 *to an investigation or proceeding related to the administra-*
8 *tion of Federal antitrust laws or foreign antitrust laws (as*
9 *defined in paragraphs (5) and (7), respectively, of section*
10 *12 of the International Antitrust Enforcement Assistance*
11 *Act of 1994 (15 U.S.C. 6211).*

12 *“(g) ADVERSE RESULT DEFINED.—For purposes of*
13 *this section the term ‘adverse result’ means—*

14 *“(1) endangering the life or physical safety of an*
15 *individual;*

16 *“(2) flight from prosecution;*

17 *“(3) the destruction of, or tampering with, evi-*
18 *dence;*

19 *“(4) the intimidation of potential witnesses; or*

20 *“(5) otherwise seriously jeopardizing an inves-*
21 *tigation or proceeding related to fraudulent or decep-*
22 *tive commercial practices or persons involved in such*
23 *practices, or unduly delaying a trial related to such*
24 *practices or persons involved in such practices, in-*
25 *cluding, but not limited to, by—*

1 “(A) *the transfer outside the territorial lim-*
2 *its of the United States of assets or records re-*
3 *lated to fraudulent or deceptive commercial prac-*
4 *tices or related to persons involved in such prac-*
5 *tices;*

6 “(B) *impeding the ability of the Commis-*
7 *sion to identify persons involved in fraudulent or*
8 *deceptive commercial practices, or to trace the*
9 *source or disposition of funds related to such*
10 *practices; or*

11 “(C) *the dissipation, fraudulent transfer, or*
12 *concealment of assets subject to recovery by the*
13 *Commission.”.*

14 (b) *CONFORMING AMENDMENT.*—Section 16(a)(2) of
15 *the Federal Trade Commission Act (15 U.S.C. 56(a)(2)) is*
16 *amended—*

17 (1) *in subparagraph (C) by striking “or” after*
18 *the semicolon;*

19 (2) *in subparagraph (D) by inserting “or” after*
20 *the semicolon; and*

21 (3) *by inserting after subparagraph (D) the fol-*
22 *lowing:*

23 “(E) *under section 21A of this Act;”.*

1 **SEC. 208. PROTECTION FOR VOLUNTARY PROVISION OF IN-**
2 **FORMATION.**

3 *The Federal Trade Commission Act (15 U.S.C. 41 et*
4 *seq.) is further amended by adding after section 21A (as*
5 *added by section 207 of this title) the following:*

6 **“SEC. 21B. PROTECTION FOR VOLUNTARY PROVISION OF**
7 **INFORMATION.**

8 *“(a) IN GENERAL.—*

9 *“(1) NO LIABILITY FOR PROVIDING CERTAIN MA-*
10 *TERIAL.—An entity described in paragraphs (2) or*
11 *(3) of subsection (d) that voluntarily provides mate-*
12 *rial to the Commission that such entity reasonably*
13 *believes is relevant to—*

14 *“(A) a possible unfair or deceptive act or*
15 *practice, as defined in section 5(a) of this Act;*
16 *or*

17 *“(B) assets subject to recovery by the Com-*
18 *mission, including assets located in foreign juris-*
19 *dictions;*

20 *shall not be liable to any person under any law or*
21 *regulation of the United States, or under the constitu-*
22 *tion, or any law or regulation, of any State, political*
23 *subdivision of a State, territory of the United States,*
24 *or the District of Columbia, for such provision of ma-*
25 *terial or for any failure to provide notice of such pro-*

1 *vision of material or of intention to so provide mate-*
2 *rial.*

3 “(2) *LIMITATIONS.—Nothing in this subsection*
4 *shall be construed to exempt any such entity from li-*
5 *ability—*

6 “(A) *for the underlying conduct reported; or*

7 “(B) *to any Federal agency for providing*
8 *such material or for any failure to comply with*
9 *any obligation the entity may have to notify a*
10 *Federal agency prior to providing such material*
11 *to the Commission.*

12 “(b) *CERTAIN FINANCIAL INSTITUTIONS.—An entity*
13 *described in paragraph (1) of subsection (d) shall, in ac-*
14 *cordance with section 5318(g)(3) of title 31, United States*
15 *Code, be exempt from liability for making a voluntary dis-*
16 *closure to the Commission of any possible violation of law*
17 *or regulation, including—*

18 “(1) *a disclosure regarding assets, including as-*
19 *sets located in foreign jurisdictions—*

20 “(A) *related to possibly fraudulent or decep-*
21 *tive commercial practices;*

22 “(B) *related to persons involved in such*
23 *practices; or*

24 “(C) *otherwise subject to recovery by the*
25 *Commission; or*

1 “(2) a disclosure regarding suspicious chargeback
2 rates related to possibly fraudulent or deceptive com-
3 mercial practices.

4 “(c) *CONSUMER COMPLAINTS.*—Any entity described
5 in subsection (d) that voluntarily provides consumer com-
6 plaints sent to it, or information contained therein, to the
7 Commission shall not be liable to any person under any
8 law or regulation of the United States, or under the con-
9 stitution, or any law or regulation, of any State, political
10 subdivision of a State, territory of the United States, or
11 the District of Columbia, for such provision of material or
12 for any failure to provide notice of such provision of mate-
13 rial or of intention to so provide material. This subsection
14 shall not provide any exemption from liability for the un-
15 derlying conduct.

16 “(d) *APPLICATION.*—This section applies to the fol-
17 lowing entities, whether foreign or domestic:

18 “(1) A financial institution as defined in section
19 5312 of title 31, United States Code.

20 “(2) To the extent not included in paragraph
21 (1), a bank or thrift institution, a commercial bank
22 or trust company, an investment company, a credit
23 card issuer, an operator of a credit card system, and
24 an issuer, redeemer, or cashier of travelers’ checks,
25 money orders, or similar instruments.

1 “(3) *A courier service, a commercial mail receiv-*
2 *ing agency, an industry membership organization, a*
3 *payment system provider, a consumer reporting agen-*
4 *cy, a domain name registrar or registry acting as*
5 *such, and a provider of alternative dispute resolution*
6 *services.*

7 “(4) *An Internet service provider or provider of*
8 *telephone services.*”

9 **SEC. 209. STAFF EXCHANGES.**

10 *The Federal Trade Commission Act (15 U.S.C. 41 et*
11 *seq.) is amended by adding after section 25 the following*
12 *new section:*

13 **“SEC. 25A. STAFF EXCHANGES.**

14 “(a) *IN GENERAL.—The Commission may—*

15 “(1) *retain or employ officers or employees of*
16 *foreign government agencies on a temporary basis as*
17 *employees of the Commission pursuant to section 2 of*
18 *this Act or section 3101 or section 3109 of title 5,*
19 *United States Code; and*

20 “(2) *detail officers or employees of the Commis-*
21 *sion to work on a temporary basis for appropriate*
22 *foreign government agencies.*

23 “(b) *RECIPROCITY AND REIMBURSEMENT.—The staff*
24 *arrangements described in subsection (a) need not be recip-*
25 *rocal. The Commission may accept payment or reimburse-*

1 *ment, in cash or in kind, from a foreign government agency*
2 *to which this section is applicable, or payment or reim-*
3 *bursement made on behalf of such agency, for expenses in-*
4 *curred by the Commission, its members, and employees in*
5 *carrying out such arrangements.*

6 “(c) *STANDARDS OF CONDUCT.*—*A person appointed*
7 *under subsection (a)(1) shall be subject to the provisions of*
8 *law relating to ethics, conflicts of interest, corruption, and*
9 *any other criminal or civil statute or regulation governing*
10 *the standards of conduct for Federal employees that are ap-*
11 *plicable to the type of appointment.”.*

12 **SEC. 210. INFORMATION SHARING WITH FINANCIAL REGU-**
13 **LATORS.**

14 *Section 1112(e) of the Right to Financial Privacy Act*
15 *of 1978 (12 U.S.C. 3412(e)) is amended by inserting “the*
16 *Federal Trade Commission,” after “the Securities and Ex-*
17 *change Commission,”.*

18 **SEC. 211. AUTHORITY TO ACCEPT REIMBURSEMENTS,**
19 **GIFTS, AND VOLUNTARY AND UNCOMPEN-**
20 **SATED SERVICES.**

21 *The Federal Trade Commission Act (15 U.S.C. 41 et*
22 *seq.) is amended—*

23 (1) *by redesignating section 26 as section 28;*
24 *and*

1 (2) *by inserting after section 25A, as added by*
2 *section 209 of this title, the following:*

3 **“SEC. 26. REIMBURSEMENT OF EXPENSES.**

4 *“The Commission may accept payment or reimburse-*
5 *ment, in cash or in kind, from a domestic or foreign law*
6 *enforcement agency, or payment or reimbursement made on*
7 *behalf of such agency, for expenses incurred by the Commis-*
8 *sion, its members, or employees in carrying out any activ-*
9 *ity pursuant to a statute administered by the Commission*
10 *without regard to any other provision of law. Any such*
11 *payments or reimbursements shall be considered a reim-*
12 *bursement to the appropriated funds of the Commission.*

13 **“SEC. 27. GIFTS AND VOLUNTARY AND UNCOMPENSATED**
14 **SERVICES.**

15 *“(a) IN GENERAL.—In furtherance of its functions the*
16 *Commission may accept, hold, administer, and use uncon-*
17 *ditional gifts, donations, and bequests of real, personal, and*
18 *other property and, notwithstanding section 1342 of 10 title*
19 *31, United States Code, accept voluntary and uncompen-*
20 *sated services.*

21 *“(b) LIMITATIONS.—*

22 *“(1) CONFLICTS OF INTEREST.—The Commission*
23 *shall establish written guidelines setting forth criteria*
24 *to be used in determining whether the acceptance,*
25 *holding, administration, or use of a gift, donation, or*

1 *bequest pursuant to subsection (a) would reflect unfa-*
2 *vorably upon the ability of the Commission or any*
3 *employee to carry out its responsibilities or official*
4 *duties in a fair and objective manner, or would com-*
5 *promise the integrity or the appearance of the integ-*
6 *rity of its programs or any official involved in those*
7 *programs.*

8 “(2) *VOLUNTARY SERVICES.*—*A person who pro-*
9 *vides voluntary and uncompensated service under*
10 *subsection (a) shall be considered a Federal employee*
11 *for purposes of—*

12 “(A) *chapter 81 of title 5, United States*
13 *Code, (relating to compensation for injury); and*

14 “(B) *the provisions of law relating to ethics,*
15 *conflicts of interest, corruption, and any other*
16 *criminal or civil statute or regulation governing*
17 *the standards of conduct for Federal employees.*

18 “(3) *TORT LIABILITY OF VOLUNTEERS.*—*A per-*
19 *son who provides voluntary and uncompensated serv-*
20 *ice under subsection (a), while assigned to duty, shall*
21 *be deemed a volunteer of a nonprofit organization or*
22 *governmental entity for purposes of the Volunteer*
23 *Protection Act of 1997 (42 U.S.C. 14501 et seq.). Sub-*
24 *section (d) of section 4 of such Act (42 U.S.C.*

1 14503(d)) shall not apply for purposes of any claim
2 against such volunteer.”.

3 **SEC. 212. PRESERVATION OF EXISTING AUTHORITY.**

4 *The authority provided by this title, and by the Fed-*
5 *eral Trade Commission Act (15 U.S.C. 41 et seq.) and the*
6 *Right to Financial Privacy Act (12 U.S.C. 3401 et seq.),*
7 *as such Acts are amended by this title, is in addition to,*
8 *and not in lieu of, any other authority vested in the Federal*
9 *Trade Commission or any other officer of the United States.*

10 **SEC. 213. REPORT.**

11 *Not later than 3 years after the date of enactment of*
12 *this Act, the Federal Trade Commission shall transmit to*
13 *Congress a report describing its use of and experience with*
14 *the authority granted by this title, along with any rec-*
15 *ommendations for additional legislation. The report shall*
16 *include—*

17 (1) *the number of cross-border complaints re-*
18 *ceived by the Commission;*

19 (2) *identification of the foreign agencies to which*
20 *the Commission has provided nonpublic investigative*
21 *information under this title;*

22 (3) *the number of times the Commission has used*
23 *compulsory process on behalf of foreign law enforce-*
24 *ment agencies pursuant to section 6 of the Federal*

1 *Trade Commission Act (15 U.S.C. 46), as amended*
2 *by section 204 of this title;*

3 *(4) a list of international agreements and memo-*
4 *randa of understanding executed by the Commission*
5 *that relate to this title;*

6 *(5) the number of times the Commission has*
7 *sought delay of notice pursuant to section 21A of the*
8 *Federal Trade Commission Act, as added by section*
9 *207 of this title, and the number of times a court has*
10 *granted a delay;*

11 *(6) a description of the types of information pri-*
12 *vate entities have provided voluntarily pursuant to*
13 *section 21B of the Federal Trade Commission Act, as*
14 *added by section 208 of this title;*

15 *(7) a description of the results of cooperation*
16 *with foreign law enforcement agencies under section*
17 *21 of the Federal Trade Commission Act (15 U.S.C.*
18 *57-2) as amended by section 206 of this title;*

19 *(8) an analysis of whether the lack of an exemp-*
20 *tion from the disclosure requirements of section 552 of*
21 *title 5, United States Code, with regard to informa-*
22 *tion or material voluntarily provided relevant to pos-*
23 *sible unfair or deceptive acts or practices, has hin-*
24 *dered the Commission in investigating or engaging in*
25 *enforcement proceedings against such practices; and*

1 (9) a description of Commission litigation
2 brought in foreign courts.

3 **TITLE III—INCREASE IN**
4 **CERTAIN PENALTIES**

5 **SEC. 301. INCREASE IN PENALTIES FOR UNFAIR OR DECEP-**
6 **TIVE ACTS OR PRACTICES EXPLOITING REAC-**
7 **TION TO CERTAIN EMERGENCIES AND MAJOR**
8 **DISASTERS.**

9 (a) *VIOLATIONS OF PROHIBITION AGAINST UNFAIR OR*
10 *DECEPTIVE ACTS OR PRACTICES.*—Section 5(m)(1) of the
11 *Federal Trade Commission Act (15 U.S.C. 45(m)(1)) is*
12 *amended by adding at the end the following:*

13 “(D) *In the case of a violation involving an unfair*
14 *or deceptive act or practice in a national emergency period*
15 *or disaster period, or relating to an international disaster,*
16 *the amount of the civil penalty under this paragraph shall*
17 *be double the amount otherwise provided in this paragraph,*
18 *if the act or practice exploits popular reaction to the na-*
19 *tional emergency or major disaster that is the basis for such*
20 *period, or to the international disaster.*

21 “(E) *In this paragraph—*

22 “(i) *the term ‘national emergency period’ means*
23 *the period that—*

1 “(I) begins on the date the President de-
2 clares a national emergency under the National
3 Emergencies Act (50 U.S.C. 1601 et seq.); and

4 “(II) ends on the expiration of the 1-year
5 period beginning on the date of the termination
6 of the national emergency;

7 “(ii) the term ‘disaster period’ means the 1-year
8 period beginning on the date the President declares
9 an emergency or major disaster under the Robert T.
10 Stafford Disaster Relief and Emergency Assistance
11 Act (42 U.S.C. 5121 et seq.); and

12 “(iii) the term ‘international disaster’ means
13 any natural or man-made disaster in response to
14 which the President furnishes assistance to any for-
15 eign country, international organization, or private
16 voluntary organization pursuant to section 491 of the
17 Foreign Assistance Act (22 U.S.C. 2292(b)).”.

18 (b) VIOLATIONS OF OTHER LAWS ENFORCED BY THE
19 FEDERAL TRADE COMMISSION.—Section 13 of the Federal
20 Trade Commission Act (15 U.S.C. 53) is amended by add-
21 ing at the end the following:

22 “(e) NATIONAL EMERGENCY OR DISASTER PERIOD.—

23 “(1) IN GENERAL.—If a person, partnership, or
24 corporation is found, in an action under subsection
25 (b), to have committed a violation involving an un-

1 *fair or deceptive act or practice in a national emer-*
2 *gency period or a disaster period, or relating to an*
3 *international disaster, and if the act or practice ex-*
4 *ploits popular reaction to the national emergency or*
5 *major disaster that is the basis for such period, or to*
6 *the international disaster, the court, after awarding*
7 *equitable relief (if any) under any other authority of*
8 *the court, shall hold the person, partnership, or cor-*
9 *poration liable for a civil penalty of not more than*
10 *\$22,000 for each such violation.*

11 “(2) *DEFINITIONS.*—*In this subsection, the fol-*
12 *lowing definitions shall apply:*

13 “(A) *NATIONAL EMERGENCY PERIOD.*—*The*
14 *term ‘national emergency period’ means the pe-*
15 *riod that—*

16 “(i) *begins on the date the President*
17 *declares a national emergency under the*
18 *National Emergencies Act (50 U.S.C. 1601*
19 *et seq.); and*

20 “(ii) *ends on the expiration of the 1-*
21 *year period beginning on the date of the ter-*
22 *mination of the national emergency.*

23 “(B) *DISASTER PERIOD.*—*The term ‘dis-*
24 *aster period’ means the 1-year period beginning*
25 *on the date the President declares an emergency*

1 *or major disaster under the Robert T. Stafford*
2 *Disaster Relief and Emergency Assistance Act*
3 *(42 U.S.C. 5121 et seq.).*

4 “(C) *INTERNATIONAL DISASTER.*—*The term*
5 *‘international disaster’ means any natural or*
6 *man-made disaster in response to which the*
7 *President furnishes assistance to any foreign*
8 *country, international organization, or private*
9 *voluntary organization pursuant to section 491*
10 *of the Foreign Assistance Act (22 U.S.C.*
11 *2292(b)).”.*

○